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THE STATUTES

OF THE

TERRITORY OF KANSAS;

PASSED AT THE FIRST SESSION OF THE LEGISLATIVE ASSEMBLY, ONE THOUSAND EIGHT HUNDRED AND FIFTY-FIVE.

478
686

TO WHICH ARE AFFIXED

THE DECLARATION OF INDEPENDENCE,

AND THE

CONSTITUTION OF THE U. STATES,

AND THE

ACT OF CONGRESS ORGANIZING SAID TERRITORY,

AND OTHER

ACTS OF CONGRESS

HAVING IMMEDIATE RELATION THERETO.

PRINTED IN PURSUANCE OF THE STATUTE IN SUCH CASE MADE AND PROVIDED.

SHAWNEE M. L. SCHOOL:
JOHN T. BRADY, PUBLIC PRINTER.
1855.

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PREFACE.

THE territory comprised within the limits of Kansas was part of the territory of Louisiana ceded by France to the United States by treaty of 30th of April, 1803. An act was passed by congress on the 31st of October, 1803, authorizing the president to take possession of the ceded territory, and in accordance with this act, formal possession was taken of Louisiana on the 20th of December, 1803, by Claiborne and Wilkinson, the United States commissioners; the surrender was made by Laussot, the colonial prefect of the French Republic of New Orleans: subsequently (in the month of March, 1804), Amos Stoddard, of the United States army, received the formal surrender of the upper province of Louisiana from Don Carlos Dehault De-Lassus, the lieutenant governor at St. Louis.

It is not known that there existed a single settlement of civilized inhabitants within that portion of Louisiana, now embraced within the territorial limits of Kansas, prior to its acquisition from France by the United States. In fact it is very doubtful whether any such settlement, of a *permanent character*, existed within that territory until within a very recent period. It is therefore considered unnecessary to advert to the operation of the laws which were established first by the French, who claimed to exercise sovereignty over the country, derived from the right of discovery and the modifications introduced by the Spanish authorities after its cession to Spain on the 3d of November, 1762, for the government of the settled portion of the territory, and which applied in theory alone to that portion which remained a wilderness, and was only visited at distant intervals by the hardy hunter.

It is only necessary to state, that the civil code, as modified by the laws of France and the regulations of Spain, *was the law* by which Louisiana was governed from September 14th, 1712, under the charter of Louis XIV to Crozat, through the subsequent cession to Spain on the 3d of November, 1762, and its retrocession by Spain to France by the secret treaty of St. Ildefonso on the 1st of October, 1800, until its cession to the United States by France on the 30th of April, 1803.

Recent events have given importance to the fact, that by these laws, and the customs which then existed in the province of Louisiana, the *institution of domestic slavery was established and recognized.*

The acquisition of Louisiana inaugurated a new era in the history of the American republic ; there were doubts in the minds of many (and of Mr. Jefferson himself), of the constitutional power of congress to make such a purchase ; but, if the purchase was legal, no doubt whatever was entertained of the authority to protect and govern the territory ; if possessed of the power to purchase the country, the constitution expressly authorizes congress " to make " all laws which shall be necessary to carry into effect the foregoing powers, " and all other powers vested by this constitution in the government of the " United States or any department thereof." The powers of acquiring the territory being conceded, the lesser and necessary power to make all laws for guarding, preserving, securing, protecting and governing the territory acquired by the greater powers, follows of course ; to abdicate sovereignty in the territory purchased, on any question, was not proposed by Mr. Jefferson, the *then* President ; distinguished for his love of liberty and profound regard for the rights of man—first among the foremost in asserting the independence of his country ;—the author not only of the Declaration of Independence and the statutes for religious freedom, but for the first project for organizing territorial governments within the original limits of the " old thirteen states." It was his fortune also to make the first acquisition of territory to his country, and to preside at the inauguration of the first territorial government instituted within that acquisition. The thought of surrendering the sovereignty of the territory he had acquired for his country, and which belonged to all of his countrymen, into the hands of the few who should first wander to it, did not occur to him ; nor did he deem it just that the territories should exercise the rights of states until their condition and their numbers became such as to entitle them to be admitted into the Union on an equality with the original states, without the suggestion of a doubt from any source.

On the 26th of March, 1804, an act was passed by the congress of the United States dividing the province into two distinct territories by a line corresponding with the thirty-third degree of north latitude ; all south of that line was called the " territory of New Orleans," and all north of that parallel was called the " district of Louisiana." By the same act, the executive power of the governor of Indiana was extended over the " district of Louisiana," which embraced the present territory of Kansas ; and the governor and judges of Indiana were authorized to *establish inferior courts*, *to prescribe their juris-*

diction and *duties*, and *to make all laws which they might deem conducive to the good government of the inhabitants.*

The governor and judges of Indiana did pass laws in pursuance of this act of congress, regulating, among other things, the domestic institutions of marriage and slavery. The first territorial government organized within the Louisiana purchase was the "territory of Orleans," being the whole of the purchase south of the thirty-third degree of north latitude, embracing the present state of Louisiana.

This territory was organized in 1804, immediately after the purchase; there was at that time within the territory about fifty thousand inhabitants, one-half of whom were slaves.

The treaty by which the territory was acquired, as well as that just deference and regard for private property which is always to be observed, prevented congress from emancipating the slaves, but instant and decisive measures were taken to restrict it; the government, of which Mr. Jefferson was then the head, with Madison and Gallatin in the cabinet, did not give over the sovereignty of the territory to the people who inhabited it.

By the constitution, congress was prohibited from passing any law against the importation of slaves into any of the states prior to 1808; but it immediately, in 1804, interdicted their importation from Africa into the territory of Orleans. Congress also forbade under severe penalties the bringing of slaves from other states or territories within the territory of Orleans for sale, and declared all slaves so brought in and sold, to be free; and exercising its sovereign authority, it prohibited any resident of the territory or other person from carrying into the territory any slave imported from Africa subsequent to 1798, and gave freedom to all so brought in. Mr. Jefferson and his illustrious compeers, who founded the constitution, did not think that they were breaking its provisions by this stringent and restrictive legislation against slavery on the Lower Mississippi; that discovery remained to be made by those of the present day; and as circumstances have changed since then, sc have the feelings of a portion of the people of the country undergone a similar change.

On the 3d of March, 1805, a territorial government was granted to the upper province of Louisiana, and its name changed from that of the "district of Louisiana" to the "territory of Louisiana"; the act provided for a governor, who was also superintendent of the Indian affairs, and the legislative power was vested in the governor and three judges; on the 4th of June, 1812, an act was passed by congress re-organizing the territorial government and changing its name to that of the "Missouri Territory"; by this act the legislative power was vested in a governor, legislative council, and a house of representatives, and the territory was authorized to send a delegate to congress; under this act many laws were passed of a general character.

The Bank of St. Louis was incorporated on the 21st of August, 1813, which as well as the old Bank of Missouri, incorporated in 1816-17, were improvidently granted, and proved disastrous to the people; on the 19th of January, 1816, a most important act was passed by which the commmon law of England, and the statutes passed prior to the 4th year of James I, of a general nature, were adopted as the law of Missouri, provided the same were not inconsistent with the laws of the United States and the statutes of Missouri.

By this act, the civil law was repealed and ceased to be the groundwork of the law of the territory.

On the 6th of March, 1820, the act of congress admitting Missouri as a state into the Union was passed, and by the 8th section of the same act, slavery was forever prohibited in all the Louisiana territory north of 36° 30′ and not included in the limits of the state of Missouri.

This prohibition applied to all the territory now included within the limits of Kansas; the act received the support of the entire delegation in congress from the slaveholding states with some few exceptions, and among its supporters were Clay of Kentucky, Pinckney of Maryland, and Lowndes of South Carolina,—men whose fame is dear to the South and whose names have become canonized in the hearts of their countrymen: the act received the official sanction of Mr. Monroe, then President of the United States, after it had been submitted to his cabinet for their opinion, and they had answered unanimously affirming its constitutionality. From this time on, the difficulties of the question of slavery presented themselves to the people, and were canvassed throughout the whole Union.

On the 30th of June, 1834, "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers," also "An act to provide for the organization of the department of Indian affairs," were passed by congress and approved by the president; subsequently, "An act supplementary to the act, entitled, an act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontier," was passed, and on the 3d of March, 1837, "An act supplementary to the act, entitled, an act to amend the judicial system of the United States," was approved by the president of the United States; all of which, by examination, appear to have a bearing on the country of which the present territory of Kansas formed a part.

On the 30th of June, 1854, Kansas was organized as a territory and Reeder appointed governor; the election of members to the council and house of representatives took place on the 30th March, 1855; the legislative assembly convened at Pawnee, (on the Kansas river, about 140 miles from Westport, Missouri,) in accordance with the proclamation of the governor, and, after having (at that place) organized by electing their officers, they passed a law entitled "An act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the territory of Kansas. The passage of this act was forced on the legislature for the reason that at Pawnee there was no place of accommodation, and members had to camp out, sleep in their wagons or tents, and cook their own provisions. This act, passed by the legislative assembly, was vetoed by Gov. Reeder, and (in accordance with the bill organizing the territory of Kansas) was reconsidered by each house and again passed by an almost unanimous vote, the objections of the governor notwithstanding; a concurrent resolution was then (as contemplated by the law passed,) introduced and passed by the two houses, adjourning to meet at the Shawnee Manual Labor School on the 22d day of July, 1855. On that day the two houses again met at the place designated, where they proceeded to enact the various laws which are now embraced in this volume.

SAMUEL A. LOWE,
Superintendent.

ST. LOUIS, MO., November 1st, 1855.

I hereby certify that the printed acts contained in this volume are true copies of the original rolls on file in the office of the Secretary of the Territory of Kansas, with the exception of such corrections of clerical errors and mistakes as are authorized to be made by the act entitled "An act concerning the statutes and legislative proceedings," and that the said acts are correctly published in the book entitled "The Statutes of the Territory of Kansas."

SAMUEL A. LOWE,
Superintendent.

SHAWNEE MANUAL LABOR SCHOOL,
October, 1855.

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DECLARATION OF INDEPENDENCE.

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves, by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into a compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the State remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws of naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military, independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes upon us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies.

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government.

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

CONSTITUTION

OF

THE UNITED STATES.

WE, *the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.*

ARTICLE I.

Sec. 1. Legislative power, in what body vested.

2. 1. Members of the House of Representatives, how chosen, who are electors of 2. Qualifications of Representatives. 3. Representation and taxation to be apportioned according to numbers. Indians and three-fifths of all other persons exempt. Census to be taken every ten years—ratio to be then fixed. 4. Vacancies in representation, how filled. 5. Speaker and other officers, how chosen.

3. 1. Senators of the United States, how chosen, their term of service, shall have but one vote. 2. Senate to be divided into three classes; the seats of one class of Senators to be vacated every second year; vacancies, how filled. 3. Qualifications of a Senator. 4. Of the President of the Senate—shall give the casting vote. 5. President pro tempore and other officers of the Senate, how chosen. 6. Senate to try all impeachments; Chief Justice to preside at the trial of the President of the United States. 7. Judgment in case of impeachment.

1. Manner of electing members of Congress. 2. To assemble at least once in every year.

5. 1. Powers of each House of Congress. 2. Rules. 3. A journal to be kept by each House, and to be published, except in a certain case; yeas and nays to be entered at the request of one-fifth of the members present. 4. Adjournment.

Sec. 6. 1. Compensation and privileges of members of Congress.

7. 1. Of revenue bills. 2. Form of proceeding in the enacting of laws. 3. Of joint resolutions, orders, &c.

8. Congress shall have power—1. To lay and collect taxes, &c. 2. To borrow money. 3. To regulate commerce. 4. To establish rules concerning bankruptcies and naturalization. 5. To coin money. 6. To punish counterfeiters. 7. To establish post offices, &c. 8. To promote the arts and sciences. 9. To constitute inferior courts, &c. 10. To declare war. 11. To raise and support armies. 12. To create a navy. 13. To make rules for army and navy. 14. To provide for calling forth the militia. 15. To provide for disciplining the militia. &c. 16. To establish the seat of government, &c. 17. General powers.

9. 1. Limitation of the powers of Congress. 2. Of the writ of habeas corpus. 3. Of ex post facto laws. 4. Direct tax, how restricted. 5. Of export duty and commerce. 6. Expenditures, how regulated. 7. Titles of nobility, presents to officers, &c., prohibited.

10. 1. Powers which the States, individually, may not exercise. 2. Powers which the States can exercise only under the sanction of Congress.

SECTION 1.

1. All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a representative who shall have not attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence Plantations one; Connecticut five; New York six; New Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North Carolina five, and Georgia three.

4. When vacancies happen in the representation of any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulation, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the ayes and nays of the members of either House on any question, shall, at the desire one-fifth of those present, be entered on the journal.

4. Neither House during the session of Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same, and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person, holding any office under the United States, shall be a member of either House during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be re-considered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, it which case it shall not be a law.

3. Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment), shall be presented to the President of the United States; and before the

same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.
2. To borrow money on the credit of the United States:
3. To regulate commerce with foreign nations, and among the several States and with the Indian tribes:
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:
6. To provide for the punishment of counterfeiting the securities and current coin of the United States:
7. To establish post offices and post roads:
8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:
9. To constitute tribunals inferior to the Supreme Court. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:
10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:
11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:
12. To provide and maintain a navy:
13. To make rules for the government and regulation of the land and naval forces:
14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:
15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:
16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: and
17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or other enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold or silver a tender, in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in a war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Sec. 1. 1. The executive power vested in a President; how elected. 2. Of electors of President and Vice President. 3. Meeting of the electors and their proceedings. (This section is annulled. *Vide* amendments, Article 12) 4. Time of choosing electors. 5. Who may be elected President of the United States. 6. Vacancies how filled. 7. Of the President's compensation. 8 and 9. His oath.

Sec. 2. 1. Powers and duties of the President. 2. President to make treaties, appoint ambassadors and other officers. 3. President to fill vacancies during recess of the Senate.

3. The President to give Congress certain information, and recommend measures.

4. How the President may be removed.

SECTION 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. *The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify and transmit sealed to the seat of government of the United*

States, directed to the President of the Senate. The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot, one of them for President; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall then act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

9. "I DO SOLEMNLY SWEAR (or affirm) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES."

SECTION 2.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion in writing, of the principal officer in each of the executive departments, upon any subject, relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint

ambassadors, other public ministers, and consuls, Judges of the Supreme Court, and other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they may think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

1. He shall, from time to time, give the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

1. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Sec. 1. Of the judicial power. Judges to hold their offices during good behavior.
2. 1. Extent of judicial power. 2. Original and appellate jurisdiction of the Supreme Court 3. Of trials for crimes.
Sec. 3. Treason, definition and punishment of.

SECTION 1.

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The judges both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases of law and equity, arising under the constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed, but when not committed within any State, the trial shall be at such places as the Congress may, by law, have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Sec. 1. Full faith to be given to the public acts, records, &c.
2. 1. Privileges and immunities of citizens.—2. Of fugitives from justice. 3. Of persons held to service or labor in one State, and fleeing to another.
Sec. 3. 1. Of the admission of a new State into the Union.
2. Of the disposition of territory, &c.
4. Guarantee and disposition of the several States.

SECTION 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States.

2. A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

SECTION 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4.

1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

Sec. 1. Amendments of the Constitution, how made and how ratified.

1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof; as the one or the other

mode of ratification may be proposed by the Congress: *Provided*, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

Sec. 1. 1. Former debts of the government valid under this constitution. 2. The constitution, &c., the supreme law of the land. All officers, State and National, to take an oath to support the constitution of the United States—no religious test shall be ever required.

1. All debts contracted, and engagements entered into, before the adoption of the Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

2. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office, or public trust, under the United States.

ARTICLE VII.

Sec. 1. When this constitution shall take effect.

1. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution, between the States so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President and Deputy from Virginia.

New Hampshire—John Langdon, Nicholas Gilman.

Massachusetts—Nathaniel Gorman, Rufus King.

Connecticut—William Samuel Johnson, Roger Sherman.

New York—Alexander Hamilton.

New Jersey—William Livingston, David Brearly, William Patterson, Jonathan Dayton.

Pennsylvania—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersol, James Wilson, Governeur Morris.

Delaware—George Reed, Gunning Bedford, jr., John Dickinson, Richard Basset, Jacob Broom.

Maryland—James M'Henry, Daniel of St. Tho. Jenifer, Daniel Carroll.

Virginia—James Blair, James Madison, jr.

North Carolina—William Blount, Richard Dobbs Spaight, Hugh Williamson.

South Carolina—John Rutledge, Charles Cotesworth Pinkney, Charles Pinkney, Pierce Butler.

Georgia—William Few, Abraham Baldwin.

Attest, WILLIAM JACKSON, *Secretary.*

IN CONVENTION.

Resolved 1. Constitution to be laid before Congress, &c.
2. Congress to fix a day for appointing electors.

Resolved 3. How constitution to be carried into effect.

Monday, September 17th, 1787.

Present—The States of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

1. *Resolved*, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each convention assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.

2. *Resolved*, That it is the opinion of this convention, that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication, the electors should be appointed, and the Senators and Representatives elected. That the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States, in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the votes for President; and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

By the unanimous order of the convention:

GEORGE WASHINGTON, *President.*

William Jackson, *Secretary.*

[The conventions of a number of the States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, Congress, at the session begun and held at the city of New York, on Wednesday, the 4th of March, 1789, proposed to the Legislatures of the several States, twelve amendments, ten of which only were adopted. They are the ten first following.]

AMENDMENTS TO THE CONSTITUTION.

ART. 1. The free exercise of religion, freedom of speech, of the press, of the right to peaceably assemble and to petition, guaranteed to the people.
2. Right to bear arms.
3. Of quartering soldiers in time of peace.
4. No search warrant to issue except on oath.
5. Capital and infamous crimes—proceedings.
6. Right of the accused in criminal cases.

ART. 7. Trial by jury preserved.
8. Bail and fines.
9. Construction of powers delegated.
10. Powers.
11. Restraint of judicial power.
12. 1. Mode of electing President and Vice President. 2 and 3. Of the Vice President.
13. In what cases persons forfeit their citizenship.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to these States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

1. The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State as themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President, shall be Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers in the list, the Senate shall choose the Vice President: a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

ARTICLE XIII.

If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

[NOTE.—The 11th article of the amendments to the Constitution was proposed at the second session of the third Congress; the 12th article, at the first session of the eighth Congress; and the 13th article, at the second session of the eleventh Congress.]

TREATY OF CESSION.

Treaty between the United States of America and the French Republic.

The President of the United States of America and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemaire, an 9, (30 September, 1800), relative to the rights claimed by the United States in virtue of the treaty concluded at Madrid the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit: the President of the United States of America, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said States, near the government of the French Republic; and the First Consul, in the name of the French people, the French citizen Barbe Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ART. 1. *Whereas*, by the article the third of the treaty concluded at St. Ildefonso, the 9th Vendemaire, an 9, (1st October, 1800), between the First Consul of the French Republic and his Catholic Majesty, it was agreed as follows: "His Catholic Majesty promises and engages on his part to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness, the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States." *And, whereas*, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and the possession of the said territory; the First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States, in the name of the French Republic, forever, and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the above mentioned treaty, concluded with his Catholic Majesty.

ART. 2. In the session made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks and other edifices, which are not private property. The archives, papers and documents relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the commissioners of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

Art. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

Art. 4. There shall be sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his Catholic Majesty the said country and its dependencies in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States.

Art. 5. Immediately after the ratification of the present treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the commissary of the French Republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the President to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

Art. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

Art. 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty until general arrangments relative to the commerce of both nations may be agreed on, it has been agreed between the contracting parties that the French ships coming directly from France or any of her colonies loaded only with the produce or manufactures of France or her said colonies, and the ships of Spain coming directly from Spain or any of her colonies loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the ports of New Orleans, and all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than those paid by the citizens of the United States.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory; the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight and navigation of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

Art. 8. In future, and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

ART. 9. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic, prior to the 30th of September, 1800, (8th Vendemaire, 9), is approved, and to have its execution in the same manner as if it had been inserted in the present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular convention, signed at the same date as the present treaty, relative to a definite rule between the contracting parties, is in the like manner approved, and will be ratified in the same form and in the same time, and jointly.

ART. 10. The present treaty shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner if possible.

In faith whereof, the respective plenipotentiaries have signed these articles in the French and English languages, declaring nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto set their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French Republic, and the 30th April, 1803.

ROBERT R. LIVINGSTON, [L. S.]
JAMES MONROE, [L. S.]
BARBE MARBOIS. [L. S.]

[The treaties with foreign nations, by which territory has been acquired, or which relate to boundaries, are those with Great Britain of 1783, (laws United States, vol. 1, p. 203), and of 1794. (same vol., p. 208), of 1795 with Spain, (same vol., p. 262), and the above treaty with France. On the 3d Nov., 1762, France, by a separate act, never made public, ceded to Spain all of Louisiana west of the Mississippi, including the city and island of New Orleans—by the treaty of St. Ildefonso, 1st Oct., 1803, Louisiana was retroceded to France. (See Laws United States, vol. 1, p. 435.)

AN ACT TO ORGANIZE THE TERRITORY OF KANSAS.

§ 19. Boundaries.
20. Executive power; how vested.
21. Secretary, his duties, &c
22. Legislative power; how vested.
23. Eligibility to office.
24. What the legislative powers shall consist of.
25. Township, district, and county offices; how filled.
26. Members of the legislature shall not hold office after the first session, &c.
27. Of the judiciary.
28. Fugitive slave law declared in force.
§ 29. Attorney and marshal appointed; duty, &c.
30. Officers; how appointed, sworn, compensation, &c.
31. Temporary seat of government.
32. Delegates to congress.
33. Appropriations for public buildings.
34. Survey of lands, &c.
35. Judicial district.
36. Officers required to give bonds and security.
37. Treaties, laws, &c., declared enforced.

Boundaries.

SEC. 19. *And be it further enacted*, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit:—beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence, northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State, to the place of beginning, be, and the same is hereby erected into a temporary government by the name of the Territory of Kansas, *and when admitted as a state or states, the said territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: Provided*, that nothing in this act contained, shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of persons or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territories which by treaty with any Indian tribe is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Kansas, until such tribe shall signify their assent to the President of the United States to be included within the said territory of Kansas, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have

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been competent to the government to make if this act had never passed.

SEC. 20. *And be it further enacted*, That the executive power and authority in and over said territory of Kansas, shall be vested in a governor, who shall hold his office for five years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside within said territory; and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

Of the executive.

Powers.

SEC. 21. *And be it further enacted*, That there shall be a secretary of the territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the President of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, to be deposited in the libraries of congress; and in case of the death, removal, resignation or absence of the governor from the territory, the secretary shall be, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

Secretary, duty, &c.

SEC. 22. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of council and house of representatives. The council shall consist of thirteen members, having the qualification of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, that the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and house of representatives shall reside in, and be inhabitants of, the district, or county or counties, for which they may be elected, respectively. Previous to the election, the governor shall cause a census, or enumeration of the inhabitants and qualified voters of

Legislative power, &c.

Proviso.

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the several counties and districts in the territory, to be taken by such persons and in such mode as the governor shall designate and appoint; and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the numbers of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives, shall be declared by the governor to be duly elected members of said house: *Provided*, that in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly, shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts, to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided*, that no session, in any one year, shall exceed the term of forty days, except the first session, which may continue sixty days.

Eligibility to office.

Proviso.

SEC. 23. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualification of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: *Provided*, that the right of suffrage and of holding office shall be exercised only by citizens of the United States and those who have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States, and the provisions of this act: *And provided further*, that no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said territory, by reason of being on service therein.

Powers, &c.

Proceedings on governor's veto.

SEC. 24. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation, consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the property of residents. Every bill which shall have passed the council and house of representatives of said territory, shall, before it becomes a law, be presented to the governor of the territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within three days—Sunday excepted—after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

Township, district and county officers, how appointed.

Sec. 25. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided for by the governor and legislative assembly of the Territory of Kansas. The governor shall nominate, and by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly; and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

Members of the legislature shall not hold office, &c

Sec. 26. *And be it further enacted*, That no member of the legislative assembly shall hold, or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term, but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except post masters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

Judiciary.

Sec. 27. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the district which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of justices of the peace, shall be limited by law: *Provided*, that justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or when the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and keep his office at the place where the court may be held. Writs of error, bills of exception and appeals shall be allowed in cases from the final decisions of said district courts, to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall trial by jury be allowed in said court. The supreme court, or justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decision of said supreme court shall be allowed, and may be taken to the supreme court of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that *in all cases involving title to slaves*, the said writs of error or appeals shall be allowed and decided by the said supreme court, without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall also be allowed to the supreme court of the United States, from the decision of the said supreme court created by this act, or of the district courts created by this act, or any judge thereof, upon any writ of habeas corpus, involving the question of personal freedom: ***Provided***, that nothing hereinafter contained shall apply to or effect the provisions of the "act respecting fugitives from justice, and persons escaping from the services of their masters," approved February twelfth, seventeen hundred and ninety-three," and the "act to amend, and supplementary to the aforesaid act," approved September eighteenth, eighteen hundred and fifty; and each of said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as may be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeal in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive the same fees in all cases which the clerks of district courts of Utah Territory now receive for similar service.

Courts to appoint their own clerks.

Appeals.

Proviso.

Fugitive slave law in force.

SEC. 28. *And be it further enacted*, That the provisions of the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend, and supplementary to the aforesaid act," approved September eighteenth, eighteen hundred and fifty, be, and the same are hereby declared to extend to, and to be in full force, within the limits of the said territory of Kansas.

Attorney.

SEC. 29. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president and who shall receive the same fees and salary as the attorney of the United States for the present territory of Utah. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present territory of Utah, and shall, in addition, be paid two hundred dollars annually, as a compensation for extra services.

Marshal.

Duty, &c.

Officers, how appointed, sworn, &c.

SEC. 30. *And be it further enacted*, That the governor, secretary, chief justice and associate justices, attorney and marshal, shall be nominated, and by and with the consent and advice of the senate, appointed by the president of the United States. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oath, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars. The chief justice and associate justices shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the date of the respective appointments, at the treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said session, estimated according to the nearest usually traveled route; and an additional allowance of three dollars shall be

Compensation of officers.

Compensation of members of legislature.

paid to the presiding officer of each house, for each day he shall so preside. Clerks, &c. And a chief clerk, one assistant clerk, a sergeant-at-arms and door-keeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day during the session of the legislative assembly; but no other officers shall be paid by the United States: Proviso. *Provided*, that there shall be but one session of the legislature annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislature together. Appropriations. There shall be appropriated annually, the usual sum to be expended by the governor, to defray the contingent expenses of the territory, including the salary of a clerk of the executive department; and there shall also be appropriated annually, a sufficient sum to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of laws, and other incidental expenses; Expenditures, how governed. and the governor and the secretary of the territory, shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not especially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Seat of government. SEC. 31. *And be it further enacted*, That the seat of government of said territory is hereby temporarily located at Fort Leavenworth; and that such portions of the public buildings as may not be actually used and needed for military purposes, may be occupied and used under the direction of the governor and legislative assembly, for public purposes, as may be required under the provisions of this act.

Delegate to congress. SEC. 32. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the house of representatives, but the delegate first elected shall hold his seat only during the term of congress to which he is elected. Election of, &c. The first election shall be held at such time and be concluded in such manner as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. Laws intended to take effect in this territory. That the constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said territory of Kansas as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being consistent with the principles of non-intervention by congress with slavery in the states and territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the compromise measures, is hereby declared inoperative and void; it being the true intent and meaning of the act not to legislate slavery into any territory or state, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution of the United States: *Provided*, that nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of the sixth of March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

Proviso.

Appropriations for public buildings, &c.

SEC. 33. *And be it further enacted*, That there shall hereafter be appropriated, as has been customary for the territorial governments, a sufficient amount to be expended under the direction of the said governor of the territory of Kansas, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, and attorney of said territory, and such other persons, under such regulations, as shall be prescribed by law.

Survey of lands, &c.

SEC. 34. *And be it further enacted*, That when the lands in the said territory shall be surveyed under the direction of the government of the United States preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory, shall be, and the same are hereby reserved for the purpose of being applied to schools in said territory, and in the states and territories hereinafter to be erected out of the same.

Judicial districts.

SEC. 35. *And be it further enacted*, That until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts; and also appoint the time and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Officers required to give bonds and security.

SEC. 36. *And be it further enacted*, That all officers to be appointed by the president, by and with the advice and consent of the senate, for the territory of Kansas, who, by virtue of the provisions of any law now existing, or which may be enacted during the present congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security at such time and place, and in such manner, as the secretary of the treasury may prescribe.

Treaties, laws, &c. to be enforced.

SEC. 37. *And be it further enacted*, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territories embraced within this act, shall be faithfully and rigidly observed, notwithstanding any thing contained in this act; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the office of the superintendent.

Approved, March 30, 1854.

AN ACT

TO PROVIDE FOR THE ERECTION OF PUBLIC BUILDINGS IN THE TERRITORY OF KANSAS.

Appropriation for public buildings in Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled: That the sum of twenty-five thousand dollars be, and the same hereby is appropriated out of any money in the treasury not otherwise appropriated for the continuation and erection of public buildings for the use of the legislature of the territory of Kansas, to be expended under the direction of the governor of said territory: *Provided,* said money, or any part thereof, or of any portion of the money heretofore appropriated for this purpose, shall not be expended until the legislature of said territory shall have fixed by law the permanent seat of government.

Approved, March 3, 1855.

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TERRITORY OF KANSAS.

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For salaries of governor, three judges, and secretary, ten thousand five hundred dollars.

For contingent expenses of said territory, one thousand five hundred dollars.

For compensation and mileage of the members of the legislative assembly, officers, clerks, and contingent expenses of the assembly, twenty thousand dollars.

For expenses of taking the census, authorized by fourth section of act, May thirtieth, one thousand eight hundred and fifty four, two thousand dollars.

For the expenses of the election of a delegate to the house of representatives of the United States, second session of the thirty-third congress, seven hundred dollars.

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Approved, March 3, 1855.

(No. 23.)—JOINT RESOLUTION MAKING AN APPROPRIATION FOR THE PURCHASE OF TERRITORIAL LIBRARIES.

Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled: That five thousand dollars be, and the same is hereby appropriated to be paid out of any money in the treasury, not otherwise appropriated, for the purchase of territorial libraries for each of the territories of Kansas and Nebraska.

Approved, March 3, 1855.

AN ACT

TO ESTABLISH THE OFFICES OF SURVEYOR GENERAL OF NEW MEXICO, KANSAS AND NEBRASKA; TO GRANT DONATIONS TO ACTUAL SETTLERS THEREIN, AND FOR OTHER PURPOSES.

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Certain lands subject to the operation of the act of '41, ch. 16.

SEC. 12. *And be it further enacted,* That all lands to which the Indian title has been or shall be extinguished within said territories of Nebraska and Kansas shall be subject to the operations of the pre-emption act of fourth September, eighteen hundred and forty one, and under the conditions, restrictions and stipulations therein mentioned: *Provided, however,* that when unsurveyed lands are claimed by pre-emption, notice of the specific tracts claimed shall be filed within three months after the survey has been made in the field; and on failure to file such notice or to pay for the tracts claimed before the day fixed for the public sale of the lands by the proclamation of the president of the United States, the parties claiming such lands shall forfeit all right thereto: *Provided,* said notices may be filed with the surveyor general and to be noted by him on the township plats, until other arrangements shall have been made by law for that purpose.

Proviso.

Proviso.

Omaha land district.

Pawnee land district.

Register and receiver to be appointed.

Lands to be surveyed and exposed for sale.

SEC. 13. *And be it further enacted,* That the public land in the territory of Nebraska to which the Indian title shall have been extinguished shall constitute a new land district, to be called the Omaha district; and the public lands in the territory of Kansas to which the Indian title shall have been extinguished shall constitute a new land district, to be called the Pawnee district; the officers for each of which districts shall be established at such points as the president may deem expedient; and he is hereby authorized to appoint, by and with the advice and consent of the senate, a register and receiver of public moneys for each of said districts, who shall each be required to reside at the site of their respective offices, and they shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to other land offices of the United States. And the president is hereby authorized to cause the surveyed lands to be exposed for sale from time to time, in the same manner and upon the same terms and conditions as the other public lands of the United States.

Approved, July 22, 1854.

AN ACT

RESPECTING FUGITIVES FROM JUSTICE, AND PERSONS ESCAPING FROM THE SERVICE OF THEIR MASTERS.

Sec. 1. Fugitives from justice to be arrested; copy of indictment or affidavit to be produced.
2. The agent receiving such fugitive empowered to transport him.
Sec. 3. Fugitive slaves, how arrested, &c.
4. Penalty for obstructing the arrest of fugitives.

Duty of executive authority of one state or territory to demand of the executive of another state or territory, fugitive. Notice of the arrest to be given; fugitive to be delivered to executive agent.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever the executive authority of any state in the Union, or either of the territories north, west or south of the river Ohio, shall demand any person or a fugitive from justice of the executive authority of any such state or territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony, or any other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. But if no such agent shall appear in six months from the time of the arrest, the person may be discharged; and all costs and expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

Agent's power to transport such fugitive; penalty for an attempt to rescue.

Sec. 2. That any agent appointed as aforesaid who shall receive the fugitive into his custody, shall be empowered to transmit him or her to the state or territory from which he or she shall have fled: and if any person or persons shall by force set at liberty or rescue the fugitive from such agent while transporting as aforesaid, the person or persons, so offending, shall on conviction be fined not exceeding five hundred dollars and be imprisoned not exceeding one year.

Fugitive slave may be arrested; certificate to claimant to be issued.

Sec. 3. That when any person held to labor in any of the United States, or in either of the territories on the north, west or south of the river Ohio, under the laws thereof, shall escape to any of the said states or territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from justice and to take him or her before any judge of the circuit or district courts of the United States residing or being within the state, or before any magistrate of the county, city, or town corporation wherein such seizure or arrest shall be made; and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent, or attorney, which shall be a sufficient warrant for removing the said fugitive from labor to the state or territory from which he or she fled.

Forfeit 500 dollars for obstructing the arrest; penalty how recoverable

SEC. 4. That any person who shall knowingly and wilfully obstruct and hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given or declared, or shall harbor or conceal such person after notice that he or she was a fugitive from labor as aforsaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars, which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action, or on account of the said injuries, or either of them.

Approved, February 12, 1793.

AN ACT

TO AMEND AND SUPPLEMENTARY TO THE ACT, ENTITLED "AN ACT RESPECTING FUGITIVES FROM JUSTICE AND PERSONS ESCAPING FROM THE SERVICE OF THEIR MASTERS," APPROVED FEBRUARY TWELFTH, ONE THOUSAND SEVEN HUNDRED AND NINETY THREE.

SEC. 1. Commissioners to execute the powers and duties of this act.
2. To be appointed by the superior courts of each territory.
3. Courts authorized to enlarge the number of commissioners.
4. Jurisdiction of commissioners concurrent with circuit district courts of the United States, and the superior courts of the territory.
5. Duty of marshal and deputy marshal.
SEC. 6. Fugitives from service may be reclaimed, how, &c.
7. Penalty for hindering or obstructing the arrest of a fugitive.
8. Fees of marshal, &c.
9. When claimant apprehends rescue, may obtain assistance from the court.
10. Evidence necessary to arrest and to obtain fugitive.

Commissioners to execute the powers and duties of this act.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the persons who have been or may hereafter be appointed commissioners, in virtue of an act of congress, by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace or other magistrate of any of the United States may exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same, under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," shall be and are hereby authorized and required to exercise and discharge all the powers and duties conferred by this act.

1789, ch. 20.

To be appointed by the superior court of each territory.

SEC. 2. *And be it further enacted*, That the superior court of each organized territory of the United States shall have the same powers to appoint commissioners, to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the circuit courts of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized territory of the United States, shall possess all the powers and exercise all the duties conferred by law upon the commissioners who shall hereafter be appointed by the circuit courts of the United States for similar purposes, and shall moreover discharge all the powers and duties conferred by this act.

Court's authority to enlarge the number of commissioners.

SEC. 3. *And be it further enacted*, That the circuit courts of the United States and the superior courts of each organized territory of the United States shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

Jurisdiction of commissioners concurrent with the courts of the United States.

SEC. 4. *And be it further enacted*, That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit and district courts of the United States in their respective circuits and districts within the several states, and the judges of the superior courts of the territories, severally and collectively, in term time or in vacation; and shall grant certificates to such claimants upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the state or territory from which such persons may have escaped or fled.

Duty of marshal and deputies.

Penalty for refusing to execute the same.

Liable for value of the fugitive escaping after his arrest.

Commissioners authorized to appoint persons to execute their warrants.

SEC. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, on motion of such claimant, by the circuit or district court for the district of such marshal; and after arrest of such fugitive by such marshal or deputy, or whilst at any time in his custody, under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable on his official bond to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive, in the state, territory or district whence he escaped; and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the constitution of the United States and this act, they are hereby authorized and empowered, within their counties respectively, to appoint in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county when necessary to insure a faithful observance of the clause of the constitution referred to in conformity with the provisions of this act, and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required as aforesaid for that purpose; and such warrant shall run and shall be executed by said officers anywhere in the state in which they are issued.

Citizens to render aid.

Fugitive from service may be reclaimed for the owner or authorized agent, &c.

Duty of court, judge or commissioner.

SEC. 6. *And be it further enacted*, That when a person held to service or labor in any state or territory of the United States, has heretofore or shall hereafter escape into any other state or territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized by power of attorney in writing, acknowleged and certified under the seal of some legal officer or court of the state or territory in which the same may be executed, may pursue and reclaim such fugitive person either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district or county, for the apprehension of such fugitive from such service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking and causing such person to be taken forthwith before some court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and by satisfactory proof being made by deposition or affidavit in writing, to be taken and certified to by such court, judge, or commissioner, or by other satisfactory testimony duly taken and certified to by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions, under the laws of the state or territory from which such person owing such service or labor may have escaped, with a certificate of such magistracy or other authority as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be deemed a competency of the proof, and with proof also by affidavit of the identity of the person whose service or labor is claimed to be due as aforesaid; that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the state or territory from which such fugitive may have escaped as aforesaid, and that said persons escaped; to make out and deliver to such claimant, or his or her agent or attorney, authority to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the state or territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act, shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first (fourth) section mentioned, shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the state or territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

Testimony of fugitive not to be admitted.

Any person knowingly hindering the arrest of a fugitive shall be fined and imprisoned.

SEC. 7. *And be it further enacted*, That any person who shall knowingly and wilfully obstruct, hinder or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them from arresting such a fugitive from service or labor, either with or without process as aforesaid; or shall rescue or attempt to rescue such fugitive from service or labor from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars and imprisonment not exceeding six months, by an indictment and conviction before the district court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any of the organized territories of the United States: and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars for each fugitive so lost as aforesaid, to be recovered by action of debt in any of the district or territorial courts aforesaid within whose jurisdiction the offence has been committed.

Penalty.

Additional damage.

Sec. 8. *And be it further enacted*, That the marshals, their deputies, and the clerks of the said district and territorial courts, shall be paid for their services as in other cases; and where such services are rendered exclusively in the arrest, custody and delivery of the fugitive to the claimant, his or her agent or attorney, and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificates to the claimant, his agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid in either case by the claimant, his or her agent or attorney. The person authorized to execute the process to be issued by such commissioner for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each, for each person he or they may arrest and take before such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner, and in general for performing such other duties as may be required by such claimant, his or her attorney, or agent, or commissioner in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agent or attorney, whether such supposed fugitive from service or labor be ordered to be delivered to such claimant by the final determination of such commissioner or not.

Fees for services of marshal, deputies, &c.

Commissioner's fee.

Fee for executing process.

Additional fee.

Sec. 9. *And be it further enacted*, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the state in which the

When claimant apprehends a rescue, to make it known by affidavit to the commissioner or judge.

arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the state from whence he fled, and there to deliver him to the said claimant, his agent or attorney; and to this end the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require; the said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for the transportation of criminals, to be certified by the judge of the district within which the arrest was made, and paid out of the treasury of the United States.

Compensation of officer.

Evidence necessary to obtain arrest and delivery of fugitives.

SEC. 10. *And be it further enacted*, That when any person held to service or labor in any state or territory, or in the district of Columbia, shall escape therefrom, the party to whom such labor or service shall be due, his, her or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party; whereupon the court shall cause a record to be made out of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk, and of the seal of the said court, being produced in another state, territory or district in which the person so escaping may be found, and being exhibited by any judge, commissioner or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned; and upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in the said record of identity of the person escaping, he or she shall be delivered up to the claimant; and the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record, and other evidences aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the state or territory from which he escaped: *Provided*, that nothing herein contained shall be construed as requiring the production of the transcript of such record as evidence aforesaid; but in its absence the claim shall be heard and determined upon other satisfactory proofs, competent in law.

Proviso.

Approved, Sept. 18, 1850.

CHAPTER 1.

ADMINISTRATION.

An Act respecting executors and administrators. (*)

ARTICLE I. Of their appointment and removal from office.
II. Of their duties respecting money and property.
III. Of their duties respecting the sale of real estate.
IV. Of the allowances of demands against estates.
V. Of the settlement of their accounts.
VI. Of the distribution of the estate.
VII. Of proceedings against executors, administrators and their securities.
VIII. Of appeals.

ARTICLE I.

Of their appointment and removal from office.

§ 1. Letters testamentary and of administration, by whom granted.
2. Duty of clerk, when granted in vacation.
3. When letters are to be granted.
4. Proceedings entrusted to the county court, where to be had.
5. Who shall not be an executor or administrator.
6. Who entitled to administration, next of kin.
7. When letters may be granted to other persons.
8. Citation may be issued to persons entitled; failure to appear deemed renunciation.
9. Letters to administrators with will annexed, when granted; proceedings in case of refusal.
10. Two or more executors, none to act except those who give bond.
11. Letters of administration to be granted *pendente lite*, &c., in certain cases.
12. Applicants for administration to discover on oath the heirs; administrator to take oath.
13. Administrators *de bonis non, pendente lite*, &c., to take similar oath.
14. Oath of administrator with the will annexed.
15. Bond of administrator.
16. Conditions of the bond.
§ 17. Bond of executor or administrator with the will annexed.
18. Who shall not be taken as security in bond of executor or administrator.
19. Who to be taken as security.
20. Bonds to be recorded, originals filed; taken in vacation, presented to court.
21. County court to approve or reject bonds taken in vacation. Duty of clerk in such cases.
22. If bond be rejected, new bond to be given. Failure to give such bond, letters to be revoked.
23. Original bond valid till new bond be given.
24. Letters of administration to be recorded before delivered.
25. Penalty on clerk for failing to record letters before delivering.
26. Certified copies of letters and record thereof to be evidence.
27. Form of letters testamentary.
28. Form of letters of administration.
29. All letters testamentary and of administration to be issued in the above form.
30. Letters revoked on production of will.
31. Letters revoked if will set aside. Other letters granted.
32. Marriage of *feme sole*, revocation of her letters.
33. For what causes, and how letters may be revoked.

(*) The probate court of Kansas territory embraces the powers vested in a county court of the state of Missouri; therefore, references made to the decisions of supreme court of Missouri, in relation to county courts, are applicable to this act. SUPERINTENDENT.

§ 34. Heir, legatee, creditor or other person, may apply for additional security, when.
35. Security in bond may apply to be released, when.
36. When court may order another bond, and additional security to be given.
37. New bond to operate as a discharge of former securities, &c.
38. Failure to give a new bond, deemed a revocation of letters.
39. Court, when necessary, may order further security to be given. Failure to comply, deemed a revocation.
40. Resignation and surrender of letters, how made.
41. Letters surrendered, expense paid by applicant.
42. Letters of one revoked, or surrendered, others to proceed.
43. Administration of goods unadministered, when to be granted.
44. If executor or administrator die, resign, or letters be revoked, how to account.
45. Who may proceed against the delinquent and his securities.
46. Securities not to be sued after seven years.
§ 47. Failing to make settlement, after citation, court may revoke letters.
48. Delinquent to pay cost of citation, or attachment.
49. Executor or administrator of member of co-partnership, to make inventory and appraise property.
50. Property may be delivered to surviving partner. Such partner to give bond.
51. Conditions of the bond.
52. Authority of county court over survivors.
53. Survivors refusing to act, executor or administrator to give bond and take possession of partnership estate. His duties.
54. To give further bond, its conditions.
55. Survivor to exhibit, and in certain cases to surrender, partnership property.
56. Failing to comply, may be cited. Penalty.
57. Two or more executors, clerk may take separate bond from each, or a joint bond from all.
58. Letters testamentary and of administration not to be granted to non residents; not to be continued after administrator becomes non-resident.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Letters testamentary and of administration, by whom granted.

SECTION 1. The probate courts, and the clerks thereof in vacation, subject to the confirmation or rejection of the probate court, shall grant letters testamentary and of administration. (*a*)

Duty of clerk when granted in vacation.

SEC. 2 The clerk shall present to the probate court, at the next succeeding term thereof, all such letters as may have been granted by him in vacation, and shall enter on the record the confirmation or rejection of such letters.

Where letters are to be granted.

SEC. 3 Letters testamentary, and of administration, shall be granted in the county in which the mansion house or place of abode of the deceased is situated. If he had no mansion house or place of abode at the time of his death, and be possessed of lands, letters shall be granted in the county in which the land, or a part thereof, lies. If the deceased had no mansion house or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or where the greater part of his estate may be. If he died out of the territory, having no mansion

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(*a*) Letters of administration cannot be granted by a deputy clerk in his own name; Stewart vs. Cave and Westerfield, 1 Missouri Rep., 752. Letters of administration granted by proper authority, in due form, and sealed with the official seal of the county court, will be good without the signature of the clerk until set aside for want of formality; Post vs. Caulk, 3 Missouri Rep., 36.

house, place of abode, or lands in this territory, such letters may be granted in any county.

Proceedings entrusted to county court, where to be had.

SEC. 4. All orders, settlements, trials and other proceedings, entrusted by this act to the probate court, shall be had or made in the county in which the letters testamentary, or of administration, were granted.

Who shall not be an executor or administrator.

SEC. 5. No justice, or clerk of any probate court, in his own county, or his deputy, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator; no married woman shall be executrix or administratrix, nor shall the executor of an executor, in consequence thereof, be executor of the first testator.

Who entitled to administration, next of kin.

SEC. 6. Letters of administration shall be granted, first, to the husband or wife, or to those who are entitled to distribution of the estate, or one or more of them, as the court, or clerk in vacation, shall believe will best manage and improve the estate. (*b*)

When letters may be granted to other persons.

SEC. 7. If no such person apply for such letters within sixty days after the death of the deceased, letters may be granted to any person whom the court, or clerk in vacation, shall consider most suitable.

Citation may be issued to persons entitled, failure to appear deemed a renunciation.

SEC. 8. The probate court, or clerk thereof in vacation, on application of any person interested, may issue a citation to the persons entitled to administration, calling on them to administer, and if they fail to take letters within thirty days after the service of the citation, or if the persons entitled to preference file their renunciation thereof, in writing, with the clerk of the probate court, letters of administration shall be granted to the person next entitled thereto.

Letters to administrators, with will annexed, &c.

SEC. 9. After probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, or be disqualified, letters of administration shall be granted to the person to whom administration would have been granted if there had been no will.

Executors, none to act except those who give bond.

SEC. 10. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

(*b*) The county court has no right to grant letters of administration to a stranger, before an opportunity is afforded, within the time prescribed by statute, to those entitled to administer, to take out letters; and where the court had thus improvidently granted such letters to a stranger, the letters were properly revoked on the application of those entitled to administer; Mullanphy vs. St. Louis county court, 6 Missouri Rep., 563.

Letters of administration to be granted *pendente lite,* &c., in certain cases.

Sec. 11. If the validity of a will be contested, or the executor be a minor, or absent from the territory, letters of administration shall be granted during the time of such contest, minority or absence, to some other person, who shall take charge of the property and administer the same according to law, under the direction of the court, and account for and pay and deliver all the money and property of the estate to the executor or regular administrator, when qualified to act.

Applicants for administration to discover on oath the heirs. Administrator to take oath.

Sec. 12. Every applicant for letters of administration, at the time of application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, that the deceased died without a will, that he will make a perfect inventory of, and faithfully administer all the estate of the deceased, and pay the debts as far as the assets will extend and the law direct, and account for and pay all assets which shall come to his possession or knowledge.

Administrator *de bonis non, pendente lite,* &c., to take similar oath.

Sec. 13. A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the minority or absence of an executor.

Oath of administrator with the will annexed.

Sec. 14. Every administrator, with the will annexed, and executor at the time letters are granted to him, shall make an affidavit that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator, pay the debts and legacies as far as the assets will extend and the laws direct, render just accounts and faithfully perform all things required by law touching such executorship or administration.

Bond of the administrator.

Sec. 15. The county court, or the clerk thereof in vacation, shall take a bond of the person to whom letters of administration are granted, with two or more sufficient securities, residents in the county, to the territory of Kansas, in such amount as the court or clerk shall deem sufficient, not less than double the amount of the estate.

Condition of the bond.

Sec. 16. The condition of such bond shall be as follows: "The condition of the above bond is, that if A. B., administrator of the estate of W. C., deceased, shall faithfully administer said estate, account for, pay and deliver all money and property of said estate, and perform all other things touching said administration required by law, or the order or decree of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force."

Bond of executor or administrator with the will annexed.

Sec. 17. A similar bond, with such variations as the case may require, shall be given by all executors and administrators with the will annexed, or of the goods remaining unadministered, and all administrators during the time of a contest about a will, or of the minority or absence of an executor.

Who shall not be taken as security in bond of executor or administrator.

Sec. 18. No judge of probate, and no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as security in any bond required to be taken by this act.

Who shall be taken as security.

Sec. 19. The probate court, or clerk in vacation, shall take special care to take as securities men who are solvent and sufficient, and who are not bound in too many other bonds, and, to satisfy themselves, they may take testimony, or examine, on oath, the applicant, or persons offered as his securities.

Bond to be recorded, originals filed; taken in vacation, presented to court.

Sec. 20. The clerk of the probate court shall record, in a well bound book kept for that purpose, all bonds given by executors and administrators, preserve the originals in regular files, and present all such as are taken in vacation to the probate court at the next session.

Probate court to decide on bonds taken in vacation. Duty of clerk.

Sec. 21. The probate court shall approve or reject the bonds taken in vacation, and the clerk shall enter such approval or rejection on the record, and endorse a copy of such entry on the bond.

If bond be rejected, new bond to be given. Failure to give such bond, letters revoked.

Sec. 22. If the bond be rejected, the court shall order the executor or administrator to give another bond, with sufficient security; and if he fail to give such bond within such time as the court shall direct, his letters shall thenceforth be deemed to be revoked.

Such bond valid till new bond be given.

Sec. 23. Such bond shall be valid until such new bond be given, notwithstanding its rejection by the court.

Letters to be recorded before delivered.

Sec. 24. All letters testamentary, and of administration, shall be recorded by the clerk of the probate court, in a well bound book kept for that purpose, before they are delivered to the executor or administrator, and the clerk shall certify on the letters that they have been recorded.

Penalty on clerk for failing to record letters before delivery.

Sec. 25. If any clerk deliver such letters without recording the same, he may be fined by the court, and shall forfeit to the party injured double the damages occasioned by such default. (c)

Certified copies of letters and record thereof to be evidence.

Sec. 26. Copies of such letters, and copies of the record thereof, certified under the seal of the probate court, shall be evidence.

Form of letters testamentary.

Sec. 27. All letters testamentary, to be issued to executors under the provisions of this act, may be in the following form: "County of ———, ss: The territory of Kansas to all per-

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(c.) Possession of letters of administration by the person to whom they purport to be granted, is at least *primâ facie* evidence of delivery; McNair vs. Dodge, 7 Missouri Rep., 407 sons to whom these presents shall come, greeting: Know ye, that the will and testament of A. B., deceased, hath, in due form of law been exhibited, proved and recorded, in the office of the clerk of the probate court for ——— county, a copy of which is hereunto annexed; and inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby authorize him, the said C. D., as such executor, to collect and secure, all and singular, the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, in whosesoever hands or possession the same may be found, and to perform and fulfil all such duties as may be enjoined upon him by said will, so far as there shall be property and the law charge him, and in general to do and perform all other acts which now are, or hereafter may be required of him by law. In testimony whereof, I, G. P., clerk of the probate court in and for said county of ———, have hereunto signed my name, and affixed the seal of said court, at office, this — day of ——, A. D., 18—. G. P., clerk."

Form of letters of administration.

SEC. 28. Letters of administration, hereafter to be issued in this territory, may be in the following form: "County of——, ss: The territory of Kansas to all persons to whom these presents shall come greeting: Know ye, that whereas, A. B., late of the county of ———, died intestate, as it is said, having, at the time of his death, property in this territory which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved and disposed of according to law, we do hereby appoint C. D., administrator of all and singular, the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law. In testimony whereof, I, G. P., clerk of the probate court in and for the county of ———, aforesaid, have hereunto signed my name, and affixed the seal of said court, at office, this ——day of ——, A. D., 18—. G. P., clerk."

All letters testamentary and of administration to be issued in the above forms.

SEC. 29. In all cases where letters of administration, with the will annexed, letters of administration *de bonis non* during minority or absence, shall hereafter be issued by the probate court, or the clerk thereof in vacation, the same shall be issued in conformity to the foregoing forms as near as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case.

Letters revoked on production of will.

Sec. 30. If, after letters of administration granted, a will of the deceased be found and probate thereof granted, the letters shall be revoked, and letters testamentary or of administration, with the will annexed, shall be granted.

Letters revoked if will set aside. Other letters granted.

Sec. 31. If a will be proved and letters thereon granted, and the will be afterwards set aside, the letters shall be revoked and other letters granted of the goods unadministered.

Marriage of *feme sole*, revocation of her letters.

Sec. 32. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve upon him, but the marriage shall extinguish her powers and her letters be revoked.

For what causes, and how letters may be revoked.

Sec. 33. If any executor or administrator become of unsound mind, or be convicted of any felony or other infamous crime, or become a habitual drunkard, or otherwise incapable or unsuitable to execute the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court, upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

Heir, legatee, creditor, or other person, may apply for additional security, when.

Sec. 34. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit, stating that the affiant has sufficient cause to believe, and does believe, that the security in the executor's or administrator's bond has, or is likely to become insolvent, or has died, or has removed from the territory, or that the principal in such bond has, or is likely to become insolvent, or is wasting the estate, or that the penalty of any such bond is insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten days' notice of the complaint, the court shall examine into the complaint.

Security in bond may apply to be released, when.

Sec. 35. If any person bound as security in the executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient cause to believe, and does believe, his co-security has died, or has, or is likely to, become insolvent, or has removed from the territory, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall examine into the complaint.

When court may order another bond to be given.

SEC. 36. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient security to be given.

New bond to operate as a discharge of former securities, &c.

SEC. 37. Such additional bond, when given and approved, shall discharge the former securities from any liability arising from any misconduct of the principal, after filing the same, and such former securities shall only be liable for such misconduct as happened prior to the giving of such new bond.

Failure to give new bond, deemed a revocation of letters.

SEC. 38. If such person fail to give such additional bond and security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

Court when necessary may order further security to be given.

SEC. 39. It shall be the duty of the probate court, whenever it shall appear necessary and proper, to order an executor or administrator to give other and further security, first giving such executor or administrator at least five days' notice of such intended order, and if such executor or administrator shall fail to give such further security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

Failure to comply deemed a revocation.

Resignation and surrender of letters, how made.

SEC. 40. If any executor or administrator publish for eight weeks, in some newspaper in this territory, a notice of his intention to apply to the probate court to resign his letters, and the court, on proof of such publication, shall believe that he should be permitted to resign, it shall so order: said publication of notice in the newspaper, upon application to the probate court for that purpose, may be dispensed with, and instead thereof the court may require said administrator to put ten written handbills in ten of the most public places in the county where he is conducting the business of his administration, at least twenty days before the term at which he intends to resign his administration.

Letters surrendered, expenses paid by applicant.

SEC. 41. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expenses of publication and all the proceedings on the application.

Letters of one revoked or surrendered, others to proceed.

SEC. 42. If there be more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered, or a part die, those who remain shall discharge all the duties required by law respecting the estate.

Administration of goods unadministered, when to be granted.

SEC. 43. If all the executors or administrators of an estate die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration, of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration, and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators. (*d*)

If executor or administrator die, resign, or letters be revoked, how to account.

SEC. 44. If any administrator or executor die, resign, or his letters be revoked, he or his legal representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money, real and personal property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such times and in such manner as the court shall order, on final settlement with such executor or administrator, or his legal representatives.

Who may proceed against the delinquent and his securities.

SEC. 45. The succeeding administrator, or the remaining executor or administrator, may proceed at law against the delinquent, and his securities, or either of them, or against any other person possessed of any part of the estate.

Securities not to be sued after seven years.

SEC. 46. All such suits against securities shall be commenced within seven years after the revocation or surrender of the letters, or the death of the principal.

Failing to make settlement after citation, court may revoke letters.

SEC. 47. If any executor or administrator fail to make either annual or final settlement, as required by law, and do not show good cause for such failure after citation, the probate court shall order the executor or administrator to give notice when required, and to make such settlement, and may enforce obedience to such order by attachment, or may revoke his letters.

Delinquent to pay costs of citation or attachment.

SEC. 48. In all cases where citation or attachment may be issued against any executor or administrator for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

Executor or administrator of member of copartnership to make inventory and appraise property.

SEC. 49. The executor or administrator on the estate of any deceased member of a co-partnership shall include in the inventory, which he is required by law to return to the probate court, the whole of the partnership estate, goods and chattels, rights and credits, appraised at its true value, as in other cases, but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest.

Property may be delivered to surviving partner. Such partner to give bond.

SEC. 50. The property thus appraised shall remain with or be delivered over, as the case may be, to the surviving partner, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he shall be required to give to

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(*d*) Where an administrator dies in possession of a specific property belonging to the estate of his intestate, and it can be identified as a part of such estate, the administrator *de bonis non* is entitled to the possession of such property; but if the property cannot be so identified, the administrator *de bonis non* must fall into the class of creditors, designated by the administration law; Gamble vs. Hamilton, 7 Missouri Rep., 469.

the territory of Kansas, in such sum, and with such securities as is required in other cases of administration.

Condition of the bond.

Sec. 51. The condition of such bond shall be in substance, as follows: "The condition of the above bond is, that if A. B., surviving partner of the late firm of ———, shall use due diligence and fidelity in closing the affairs of the late co-partnership, apply the property thereof towards the payment of the partnership debts, render an account, upon oath, to the probate court, whenever by it thereunto required, of all the partnership affair, including the property owned by the late firm, and the dehts due thereto, as well as what may have been paid by the survivor towards the partnership debts, and what may still be due and owing therefor, and pay over within two years, unless a longer time be allowed by the probate court, to the executor or administrator, the excess, if any there be, beyond satisfying the partnership debts, then the above bond to be void, otherwise to remain in full force.

Authority of probate court over survivor.

Sec. 52. The probate court shall have the same authority to cite such survivor to account, and to adjudicate upon such account, as in the case of an ordinary administrator, and the parties interested shall have the like remedies by means of such bond, for any misconduct or neglect of such survivor, as may be had against administrators.

Survivor refusing to act, executor or administrator to give bond and take possession of partnership estate.

Sec. 53. In case the surviving partner, having been duly cited for that purpose, shall neglect or refuse to give the bond required in the fiftieth and fifty-first sections of this article, the executor or administrator on the estate of such deceased partner, in giving a bond, as provided in the following sections, shall forthwith take the whole partnership estate, goods and chattels, rights and credits, into his own possession, and shall be authorized to use the name of the survivor in collecting the debts due the late firm, if necessary; and shall, with the partnership property, pay the debts due from the late firm, with as much expedition as possible, and return or pay to the surviving partner his proportion of the excess, if there be any.

His duties.

To give further bond; its conditions.

Sec. 54. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond, to its satisfaction, conditioned that he will faithfully execute that trust, and with no unnecessary waste or expense, which bond may be enforced like other administration bonds.

Survivor to exhibit, and, in certain cases, to surrender partnership property.

Sec. 55. Every surviving partner, on the demand of any administrator of a deceased partner, shall exhibit to the appraisers, the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement, and in case the administration thereof shall devolve upon such administrator, the said survivor shall surrender to him, on demand, all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

Failing to comply, may be cited.

Penalty.

SEC. 56. Every surviving partner, who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal before the probate court, and unless he comply with such provision, or show sufficient excuse for his omission, the probate court may commit him to the common jail of the county, there to remain until he consent to comply, or is discharged by due course of law.

Two or more executors, clerk may take separate bond from each, or joint bond from all.

SEC. 57. When two or more persons are appointed executors, the court, or clerk in vacation, may take a separate bond with securities from each of them, or a joint bond with securities from all of them.

Letters testamentary and of administration not to be granted to non-residents, &c.

SEC. 58. Letters testamentary and of administration shall in no case be granted to a non-resident of this territory; and where an executor or administrator shall become non-resident, the probate court, having jurisdiction of the estate of the testator or intestate of such executor or administrator, shall revoke his letters.

ARTICLE II.

Of their duties respecting money and property.

§ 1. Executors and administrators to collect and take charge of estate.
2. To make and return inventory.
3. Affidavit to be annexed to the inventory.
4. Inventory and affidavit, when and where to be filed.
5. Additional inventories, when to be made.
6. Witnesses shall be appointed to accompany executor or administrator in opening and examining effects of deceased, and to aid in making inventory.
7. Their compensation.
8. To open and examine effects of deceased without witnesses, penalty for.
9. Affidavit filed against persons concealing or embezzling effects, citation to issue.
§ 10. Refusing to answer interrogatories, may be committed to jail.
11. If party charged and cited appear and answer, trial to be in a summary manner.
12. In case of conviction, court may compel delivery of effects.
13. Estate to be appraised, by whom.
14. Affidavit of appraisers.
15. Duty of appraisers.
16. Appraisement and affidavit, when and where to be filed.
17. Compensation of appraisers.
18. Additional appraisement, when to be made.
19. Inventories and appraisements, how far evidence.
20. When and how notice to creditors shall be published.

§ 21. When and how to advertise, when there are no known heirs.
22. Administrator may collect debts, give receipts, and prosecute and defend actions.
23. What actions executors and administrators may prosecute and defend.
24. Competent witnesses in certain cases.
25. What actions may be maintained by and against executors and administrators.
26. Not to extend to certain actions.
27. Debts due by executor or administrator to testator or intestate, assets in his hands.
28. Debtor appointed executor, his debt considered assets.
29. Articles allowed the widow in addition to dower.
30. May take other property not to exceed two hundred dollars.
31. To be deducted from her dower in personalty, not liable for debts.
32. Property not taken, proceeds to be paid to widow.
33. Sale of perishable articles, how made.
34. If insufficient to pay debts, other personalty to be sold.
35. Bonds and notes may be assigned to creditors, legatees and distributees.
36. Notice of sale, when and how given.
37. Estate of testator, when not to be sold.
38. All the personal estate to be sold, where there are no known heirs.
39. Personal estate may be sold at private sale, when.
40. Clerk to be employed at public sale.
41. His duties.
42. Sale bill, when and where filed.
43. Real estate leased, and slaves hired out by order of court.
44. Repairs on real estate made by order of court.
§ 45. Inventories, appraisements and sale bills filed, when to be examined by court, &c.
46. Assistance in taking care of estate, when to be procured.
47. Further assistance, when authorized; expenses, how paid.
48. Interest on debts, when assets. When to be paid by executor or administrator.
49. To be accounted for under the equitable control of the court.
50. Statement on oath of money on hand, when to be rendered.
51. Disposition of money on hand, when and how made.
52. Orders for collection, saleand distribution, when made.
53. Executors and administrators may give receipts and discharges, effect of.
54. If property bound by lien of execution, duty of executor or administrator. To sell the same.
55. How the proceeds of such sale shall be applied.
56. Preceding provisions not to extend to certain cases.
57. In certain cases slaves not to be hired out, and only a certain portion of personal estate to be sold. Proviso.
58. Appraisement. Such property to be left in possession of the widow or family.
50. Suspension of hire or sale of such property may be ordered in vacation of court.
60. In case of injury or waste to such property, the court may rescind such order.
61. Courts may continue proceedings before them for good cause.

Executors and administrators to collect and take charge of estate.

SECTION 1. Every executor and administrator, immediately after receiving letters, shall collect and take into possession the goods, chattels, money, books, papers and evidences of debt, or of title to any real or personal estate, except the property reserved as the absolute property of the widow.

To make and return inventory.

SEC. 2. He shall make an inventory of all the real and personal estate of the deceased, describing the quantity, situation and title of the real estate, also the books and papers, the debts due or to become due to the deceased, the names of debtors, the date of the contract, the amount of interest then due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate.

Affidavit to be an-

SEC. 3. He shall annex to the inventory an affidavit, stating that it is a full inventory and description of all the money, goods, chattels and estate, real and personal, books, papers and evidences of debt and of title of the deceased, and of all debts due and becoming due, so far as he can ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

nexed to the inventory.

Sec. 4. The inventory with the affidavit, shall be filed in the office of the clerk of the probate court within sixty days after the letters are granted.

Inventory and affidavit, when and where to be filed.

Sec. 5. If, after making the first inventory, any other real or personal estate of the deceased come to his possession or knowledge, he shall file a similar additional inventory thereof.

Additional inventories, when to be made.

Sec. 6. At the time of appointing an administrator, or of granting letters testamentary to an executor, the court, or clerk in vacation, shall name two respectable householders of the vicinity of the last abode of the deceased, who are disinterested and of no kin to the administrator or executor, as witnesses to accompany and aid the administrator or executor in opening and examining the papers and money of the deceased, and in making an inventory thereof; and if they fail to attend, the court, or clerk, shall appoint others in their stead, so that two witnesses shall be present to attend the proceeding, before it shall be lawful for any executor or administrator to open or examine such papers or money by virtue of his appointment.

Witnesses shall be appointed to accompany executor or administrator in opening and examining effects of deceased, and to aid in making inventory.

Sec. 7. The probate court shall allow such witnesses a compensation for such duties, not exceeding that allowed to appraisers.

Their compensation.

Sec. 8. If any administrator or executor open or examine the papers or money of the deceased without the publicity and attestation provided in this act, he shall forfeit and pay, to the persons entitled to the estate, a sum not exceeding five thousand dollars, to be recovered before the probate court.

To open and examine effects of deceased without witnesses, penalty for.

Sec. 9. If the executor or administrator, or other person interested in any estate, file an affidavit in the probate court, stating that the affiant has good cause to believe, and does believe, that any person has concealed or embezzled any goods, chattels, money, books, papers or evidences of debt of the deceased, the probate court may cite such person to appear before them, and compel such appearance by attachment, and examine him and other witnesses, on oath, for the discovery of the same.

Affidavit filed against persons concealing or embezzling effects, citation to issue.

Sec. 10. If any such person refuse to answer proper interrogatories, the court may commit him to jail until he answer or be discharged by law.

Refusing to answer, may be committed to jail.

Sec. 11. If any person charged and cited as aforesaid shall

If party charged

and cited appear and answer, trial to be in a summary manner.

appear, and in his answer to the interrogatories deny the right of the executor or administrator to such goods, chattels, money, books, papers, or evidences of debt, the right thereof shall be tried by a jury, or if neither party require a jury, by the court, in a summary manner, and judgment shall be rendered according to the right, and for costs.

In case of conviction, court may compel delivery of effects.

SEC. 12. If any person be convicted of unlawfully detaining such goods, chattels, money or effects, books, papers or evidences of debt, the court may compel the delivery thereof by attachment.

Estate to be appraised, by whom.

SEC. 13. After having collected personal estate, the executor or administrator shall cause the same to be appraised by three disinterested householders of the county.

Affidavit of appraisers.

SEC. 14. Before entering on their duties, the appraisers shall make an affidavit, stating that they are not interested, nor of kin to any person interested in the estate, as heir or devisee, and that they will to the best of their ability, view and appraise the slaves and other personal estate to them produced.

Duty of appraisers.

SEC. 15. The appraisers shall view and appraise such property, and make a list specifying each article appraised, its value, and total amount of the appraisement, which shall be signed by the appraisers or two of them.

Appraisement, &c. when and where to be filed.

SEC. 16. The appraisement and affidavits shall be filed in the office of the clerk of the probate court, within sixty days after letters granted.

Compensation to appraisers.

SEC. 17. Each appraiser shall receive from the estate one dollar per day for his attendance.

Additional appraisement, when to be made.

SEC. 18. Every executor or administrator shall cause similar appraisements to be filed of all personal estate, which shall come to his possession after the first appraisement.

Inventories and appraisements, how far evidence.

SEC. 19. Inventories and appraisements may be given in evidence, but shall not be conclusive for or against any executor or administrator, but other evidence may be introduced to vary the effect thereof.

When and how notice to creditors shall be published.

SEC. 20. Within thirty days after letters are granted, the executor or administrator shall publish in some newspaper in this territory, for three weeks, a notice that letters testamentary, or of administration have been granted to him, stating the date and requiring all persons having claims against the estate, to exhibit them for allowance to the executor or administrator within one year after the date of the letters, or they may be precluded from any benefit of such estate; and that if such claims be not exhibited within three years from the date of the letters, they shall be forever barred.

When and how to advertise, when there are no known heirs.

Sec. 21. When an intestate has left no known heirs, the administrator shall also publish a notice for six weeks in some newspaper, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity, if known, and the appraised amount of his estate.

Administrator may collect debts, give receipts, and prosecute and defend actions.

Sec. 22. Executors and administrators shall collect all money and debts of every kind due to the deceased, and give receipts and discharges therefor, and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as are brought against him. (*e*)

What actions executors, &c., may prosecute and defend.

Sec. 23. They shall prosecute and defend all actions commenced by or against the deceased, at the time of his death, and which might have been prosecuted or maintained by or against such executor or administrator. (*f*)

Competent witness in certain cases.

Sec. 24. In all actions prosecuted or defended by or against any executor or administrator, he shall not be disqualified from being a witness, as to facts occurring anterior to his qualification, on account of being executor or administrator.

What actions may be maintained by and against executors and administrators.

Sec. 25. For all wrongs done to the property, rights or interest of another, for which an action might be maintained against the wrong doer, such action may be brought by the person injured, or, after his death, by his executor or administrator against such wrong doer, and after his death, against his executors or administrators, in the same manner and with the like effect, in all respects as actions founded upon contracts. (*g*)

Not to extend to certain cases.

Sec. 26. The preceding section shall not extend to actions for slander, libel, assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

Debts due by executors, &c., to be assets.

Sec. 27. All debts due by an administrator to his testator or intestate, shall be considered as assets in his hands.

(*e*) Lapse of time, there being no statute interposing and no final settlement of the estate, will not render null letters of administration. McNair vs. Dodge, 7 Missouri Rep., 408. An administrator can recover in assumpsit for the use and occupation of the house of his intestate after his death. Rector vs. Rankin, 1 Missouri Rep., 371. An administrator may sue by petition in debt. Baily vs. Ormsby, 3 Missouri Rep., 580. An administrator, with the will annexed, may sue for a breach of covenant made to the testator to convey land. Labarge vs. McCausland, 3 Missouri Rep., 585. See Hughes et al vs. Hughes, 8 Missouri Rep., 38.

(*f*) An executor cannot prosecute a writ of error on a judgment obtained in the life time of the testator, unless the death of the testator be suggested on the record. Childers vs. Goza, 1 Missouri Rep., 394.

(*g*) An executor or administrator, as such, cannot maintain an action of ejectment for lands, of which his testator or intestate died seized. 7 Missouri Rep., 374. See Higgins vs. McNally's adm'rs., 8 Missouri Rep.

Debtor appointed executor, his debt considered assets.

SEC. 28. If any person appoint his debtor executor of his will, such appointment shall not discharge the debt, but it shall be assets in his hands.

Articles allowed widow in addition to dower.

SEC. 29. In addition to dower a widow shall be allowed to keep, as her absolute property, all the wearing apparel of the family, her wheels, looms and other implements of industry; all yarn, cloth and clothing made up in the family for their own use; all grain, meat, vegetables, groceries, and other provisions on hand, and provided, and necessary for the subsistence of the widow and her family for twelve months, and as many beds, with bedding, as shall be necessary for herself and the family of the deceased residing with her, and under her control.

May take other property not to exceed two hundred dollars.

SEC. 30. In addition to the above, the widow may take such personal property as she may choose, not to exceed the appraised value of two hundred dollars, for which she shall give a receipt. (*h*)

To be deducted from her dower in personality, not liable for debts.

SEC. 31. The widow shall apply for such property named in the preceding section, before the same be distributed or sold, and it shall be deducted from her dower in the personal estate, if there be any, but the property so delivered shall in no case be liable for the payment of the debts of the deceased.

Property not taken, proceeds to be paid to widow.

SEC. 32. If the widow do not receive the property thus allowed her, and the same be sold by the executor or administrator, the probate court shall order the money to be paid to the widow, at any time before the same be paid out for debt or be distributed.

Sale of perishable property, how to be made.

SEC. 33. Every executor or administrator, after the appraisement, shall sell at public sale all goods and chattels of the deceased that are liable to perish, be consumed or rendered worse by the keeping, giving such credit as he may think best, and take bonds or notes, with good security, of the purchaser. (*i*)

If insufficient to pay debts, other personality to be sold.

SEC. 34. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall, in the same manner, sell other personal estate, disposing of the slaves last, until the debts and legacies be all paid; but specific legacies shall not be sold in any case, unless it be necessary for the payment of the debts.

Bonds and notes may be assigned to creditors, legatees and distributees.

SEC. 35. Executors and administrators may assign the notes and bonds of the estate to creditors, legatees and distributees, in discharge of such an amount of their claims equal to the amount of such bond or note.

(*h*) Craslin et al vs. Baker, 8 Missouri Rep., 437.

(*i*) A bond executed to a person as administrator is an admission of his representative character, and the obligor cannot afterwards deny it. Jones & Jones vs. Snedecor, 3 Missouri Rep., 390.

SEC. 36. They shall give notice of the time and place of sale for three weeks in some newspaper in this territory, or by handbills, put up in eight public places in the county where the sale is made.

Notice of sale, how and when given.

SEC. 37. If any testator direct his estate not to be sold, the same shall be reserved, unless such sale be necessary for the payment of debts.

Estate of testator, when not to be sold.

SEC. 38. When there are no known heirs or legal representatives, the administrator shall sell all the personal estate of the deceased within one year after administration is granted.

All the personal estate to be sold, when there are no known heirs.

SEC. 39. If any executor or administrator apply to the probate court for permission to sell the personal estate of the deceased, or any part thereof, at private sale, and the court be satisfied that such sale would not be prejudicial to the persons interested in the estate, it may order such sale and prescribe the terms thereof.

Personal estate may be sold at private sale, when.

SEC. 40. In every public sale, the executor or administrator shall employ a competent clerk, not interested nor of kin to any heir or devisee of the estate.

Clerk to be employed at public sale.

SEC. 41. Such clerk shall keep a true account of the sale made, make a list of sales specifying each article sold, the price and the name of the purchaser, and shall annex his affidavit to such list, stating that the same is a true account of the sales made by such executor or administrator at the time specified.

His duties.

SEC. 42. Such sale bill shall be filed by the executor or administrator, in the office of the clerk of the probate court, within thirty days after the sale, and it shall be evidence in the same manner and with like effect as inventories.

Sale bill, when and where filed.

SEC. 43. Executors and administrators, under the direction of the probate court, shall lease the real estate for any term not more than three years, and hire out the slaves for any period not more than one year at a time, and shall receive and recover such rents, hire and wages. (*i*) Slaves shall be hired to the highest bidder, at the court house door, unless the court order otherwise.

Real estate leased and slaves hired out by order of court.

SEC. 44. When any house, out building, fence or other improvements on the real estate require repairs, the probate court may, on the application of any person interested, order the executor or administrator to cause the necessary repairs to be made without prejudicing creditors. (*j*)

Repairs on real estate made by order of court.

(*i*) An administrator can recover in assumpsit, for the use and occupation of the house of the intestate after his death. 1 Missouri Rep., 371. When an administrator leases the property of an intestate, it is not necessary, in an action for rent, for him to allege in his declaration, that the county court gave him permission and authority to grant the lease.—Ib.

(*j*) Building a house on the real estate of an intestate by the administrator, is a misapplication of the funds of the estate, and the securities will be liable for the waste. Byrd vs. Miller, 2 Missouri Rep., 102.

Inventories, &c., filed; when to be examined by probate court, &c

SEC. 45. At every term of the probate court, they shall examine all inventories, appraisements and sale bills filed since their last term, to see if they have been made and filed according to law, and shall issue citations to compel all delinquents to comply with the law.

Assistance in taking care of estate, when to be procured.

SEC. 46. If a person die, leaving horses or other stock that require attention, crops ungathered, property so exposed as to be in danger of loss in value, or work in an unfinished state, so that the estate would suffer material loss from the want of care and additional labor, the executor or administrator may, until the meeting of the probate court, procure such indispensable labor to be performed on the most reasonable terms that he can.

Further assistance, when authorized; expenses, how paid.

SEC. 47. The probate court, on the application of any person interested, may in such cases authorize further labor to be performed as the interests of the estate requires, and all sums thus paid, if approved by the court, shall be allowed as expenses of administration.

Interest on debts, when assets; when to be paid by executor or administrator.

SEC. 48. All interest received by executors or administrators on debts due to the deceased, shall be assets in their hands, and if they lend the money of the deceased, or use it for their private purposes, they shall pay interest thereon to the estate.

To be accounted for under the equitable control of the court.

SEC. 49. The probate court shall exercise an equitable control in making executors and administrators account for interest accruing to the estate on account of money loaned by them belonging to the estate, or otherwise, and for that purpose may take testimony, or examine the executor or administrator on oath.

Statement on oath of money on hand, when to be made.

SEC. 50. Every executor and administrator, at the second term after the one at which he is required to make settlement, shall render to the probate court a statement, on oath, of the amount of money of the estate actually on hand.

Disposition of money on hand, when and how made.

SEC. 51. If, on the return of the inventory, or at any other time, it shall appear to the satisfaction of the probate court that there is a surplus of money in the hands of the executor or administrator, that will not be shortly required for the expenses of administration, or payment of debts, they shall have discretionary power to order him to lend out the money on such terms, and for such time, as they may judge best.

Orders for collection, sale and distribution, when made.

SEC. 52. The probate court may at any time make such orders as the interest of the estate may require, for the speedy collection of debts, or the sale or distribution of personal property.

Executors and administrators may give receipts and discharges, effect of.

SEC. 53. All executors and administrators may give receipts and discharges for money received by them on account of the deceased; but if there be more than one executor or administrator, a majority shall join in such receipt or discharge, or they shall be void.

If property bound by lien of execution, duty of executor or administrator to sell the same.

Sec. 54. If personal property shall be bound by the lien of an execution or executions, whether such execution or executions shall have been levied or not, at the time of the death of the testator or intestate, the executor or administrator shall, nevertheless, inventory, cause to be appraised, and sell the same as if no such lien existed, except that a separate inventory, appraisement and sale bill, of such property, shall be made and returned.

How the proceeds of such sale shall be applied.

Sec. 55. The proceeds of the sale of such personal property shall be applied, under the direction of the probate court, in the following manner: *First.* When there is but one execution, to the payment of such execution, and the residue, if any, shall be assets to be administered according to law. *Second.* When there is more than one execution, the liens whereof are of even date, to the payment of such executions, and the residue, if any, shall be assets, to be administered according to law; but if such proceeds shall not be sufficient to pay the whole, then in proportion to their respective amounts. *Third.* When there is more than one execution, the liens whereof are of uneven dates, and such proceeds shall not be sufficient to pay the whole, to the payment thereof according to their priority of lien.

Preceding provisions not to extend to certain cases.

Sec. 56. The provisions of the two preceding sections shall not be construed to deprive the widow of the benefit of the twenty-seventh, twenty-eighth and thirtieth sections of the second article of this act, nor to deprive the demands classed in the first and second sub-divisions of the first section of the fourth article of this act, of their precedence over all other demands against the estate of the deceased.

In certain cases, slaves not to be hired out, and only a certain portion of personal estate to be sold.

Sec. 57. In all cases where any person shall die, leaving a widow or other family, the probate court has power, if in its opinion it will not be prejudicial to creditors, and will be advantageous to such widow or others entitled to distribution in the estate, to order that the slaves belonging to such estate shall not be hired out, and that no more of the personal estate shall be sold than will be sufficient to pay the debts; *Provided*, The probate court shall take good and sufficient security that the property shall be forthcoming to answer the demand of any creditor, or others concerned in the estate.

Appraisement. Such property to be left in possession of the widow, or family.

Sec. 58. In the cases specified in the preceding section, the executor or administrator shall make an inventory and appraisement of the estate as in other cases, but he shall leave such slaves as are ordered not to be hired out, and such personal property as is ordered not to be sold, in possession of the widow or other family, who shall use and enjoy the same until the probate court shall order such property to be administered.

Suspension of hire or sales of such property, may be ordered in vacation of court.

Sec. 59. If slaves are about to be hired out, or property is about to be sold in the vacation of the probate court, any judge of such probate court has power, upon the petition of the executor or administrator, or of any other person interested in the estate, to order the suspension of such hiring or sale until the next term of the probate court.

In case of injury, or waste to such property, the court may rescind such order.

Sec. 60. In any case where the court has ordered that slaves shall not be hired out, or that property shall not be sold, if it shall appear to the probate court that such slaves or other property are likely to be injured or wasted, or that those interested therein would be benefitted thereby, such court shall order that such estate be forthwith administered, and in such cases the rights of all persons interested shall be the same as if the order, provided for in the fifty-seventh section of this article, had not been made.

Courts may continue proceedings before them for good cause.

Sec. 61. For good cause shown, the probate court may continue any matter or proceeding arising before them under this act, on such terms as it may consider just.

ARTICLE III.

Of their duties respecting the sale of real estate.

§ 1. Power by will to sell lands, to be executed by whom.
2. Contracts for the purchase of lands—may be carried into effect by order of court, if assets sufficient.
3. Interest of testator, or intestate, to be sold if the assets are not sufficient to fill contract.
4. Court may order lands to be relinquished, if purchased from individuals.
5. If purchased from officer authorized to sell school lands, may be relinquished in the discretion of the court.
6. Court may order redemption of mortgaged property.
7. Court may order the equity of redemption to be sold.
8. In all cases of relinquishment, executor or administrator competent to make a deed; effect thereof.
9. If personal estate insufficient to pay debts, petition to sell real estate to be filed.
10. If real estate bound by lien of judgment, to be stated in petition.
11. Proceeds of sale to be applied to payment of such judgment; remainder to become assets.
§ 12. If real estate bound by lien of several judgments, to be stated in petition.
13. Proceeds of sale to be applied to the payment of such judgments, according to priority of lien.
14. Residue of proceeds to become assets.
15. If lien of such judgments be even, proceeds how applied.
16. If real estate, bound by lien of several judgments, be sold under junior judgment, facts to be stated in petition of executor or administrator.
17. Plaintiff in junior judgment and purchaser to be notified of such petition; what notice shall contain.
18. Notice to be published, how.
19. Purchaser privileged to pay prior judgment or judgments, when.
20. Failing to pay, real estate to be sold free from encumbrance. Proceeds how disposed of.
21. Petition to be accompanied by true account of administration, &c., verified by affidavit.
22. Executor or administrator failing to make such application, others may. Notice to be given.

§ 23. Before the time of such application, executor or administrator to make perfect accounts, &c., verified by affidavit. Failing to comply may be attached.
24. When such petition, accounts, &c., are filed, court shall order notice to be given. When and how published.
25. Upon proof of publication, court to hear testimony, and if necessary order sale.
26. Personal estate may be reserved and real estate sold.
27. Real estate to be appraised before sale.
28. Affidavit to be made by appraisers.
29. Notice of such sale of real estate to be given; how published.
30. When sales of real estate shall be made, and how conducted.
31. Not to be sold at private sale, nor shall executor or administrator purchase at less than three-fourths of its appraised value.
32. Report of sale; how made.
33. If report not approved by court, new order to be made.
§ 34. If report be approved, deed to be made.
35. Effect of deed.
36. Contract for the conveyance of real estate, by testator or intestate, how enforced.
37. Affidavit to be annexed to petition.
38. Notice to be served on executor or administrator.
39. Court to make an order for the specific performance of contract, except, &c.
40. Upon such order, executor or administrator to execute deed.
41. Effect of such deed.
42. Petition for specific performance may be brought in superior court, in first instance. May be certified to superior from probate court.
43. Superior court, in such cases, to proceed according to the practice in courts of chancery.
44. Proceedings by executor or administrator for specific performance of contract, made by testator or intestate.
45. In what case real estate to be sold.

SEC. 1. The sale and conveyance of real estate under a will shall be made by the acting executor, or administrator with the will annexed, if no other person be appointed for that purpose by the will, or if such person fail to perform the trust.

Power by will to sell lands, to be executed by whom.

SEC. 2. If any person die, having purchased real estate, and shall not have completed the payment, nor devised such estate, nor provided for the payment by will, and the completion of such payment would be beneficial to the estate and not injurious to creditors, the executor or administrator, by order of the probate court, may complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate.

Contracts for the purchase of lands, may be carried into effect by order of court, if assets be sufficient.

SEC. 3. If the court believe that after the payment of debts, there will not be sufficient to pay for such real estate, the court may order the executor or administrator to sell all the right, title, and interest of the deceased therein.

Interest of testator, or intestate, to be sold if assets are not sufficient to fill contract.

SEC. 4. If such real estate has been purchased from individuals, the court may, if they believe it advantageous to the estate, order the same to be relinquished to such individual on the most advantageous terms that can be agreed upon.

Court may order lands to be relinquished, if purchased from individuals.

SEC. 5. If such real estate shall have been purchased from any officer authorized by law to sell school lands, the probate court may, in its discretion, order the same to be relinquished, and in such cases the officer shall be authorized to accept of such relinquishment, and surrender the obligation of the deceased.

If purchased from officer authorized to sell school lands, it may be relinquished in the discretion of the court.

SEC. 6. If any person die, having mortgaged any real estate,

Court may order the redemption

mortgaged property.

or mortgaged or pledged any personal property, or owning any equity of redemption, and shall not have devised the same, or provided for the redemption of the same by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem such estate out of the personal assets, if it would be beneficial to the estate, and not injurious to the creditors. (*l*)

Court may order the equity of redemption to be sold.

Sec. 7. If such redemption would injure the estate or creditors, or there would not be assets to redeem such estate after payment of debts, the court shall order all the right, title and interest of the estate to such property to be sold at public sale.

In all cases of relinquishment, executor or administrator competent to make a deed. Effect thereof.

Sec. 8. In cases of relinquishment of the interest of the testator or intestate, under the provisions of the fourth and fifth sections of this article, and in all cases of the sale of the interest of the testator or intestate, under the third and seventh sections of this article, the executor or administrator shall be competent, by deed, to make such relinquishment, or to convey to the purchaser all the right, title, and interest the testator or intestate had in and to such real estate at the time of his death.

If personal estate insufficient to pay debts, petition to sell real estate to be filed.

Sec. 9. If any person die and not have personal estate sufficient to pay his debts, the executor or administrator shall file a petition to the probate court, stating the facts, and praying for the sale of the real estate, or so much thereof as will pay the debts.

If real estate bound by lien of judgment, to be stated in petition.

Sec. 10. If such real estate be bound by the lien of a judgment, the executor or administrator shall state that fact in his petition, the date and amount of the judgment, and the name of the person in whose favor the same was rendered.

Proceeds of sale to be applied to payment of such judgment; remainder to become assets.

Sec. 11. The proceeds of the sale of such real estate shall be first applied to the payment of such judgment, and the residue, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

If real estate bound by lien of several judgments, to be stated in petition.

Sec. 12. If such real estate be bound by the lien of several judgments, the executor or administrator shall state that fact in his petition, the dates and amounts of such judgments, and the names of the persons in whose favor the same were rendered.

Proceeds of such sale to be applied to the payment of such judgments.

Sec. 13. The proceeds of the sale of such real estate shall be first applied to the payment of such judgments according to their priority of lien.

Residue of pro-

Sec. 14. The residue of such proceeds, if any, shall become

(*l*) The circuit court has jurisdiction over a suit for the foreclosure of a mortgage, as well after the death of the mortgagor, as before. Ayres vs. heirs of Shannon, 5 Mo. Rep., 282.

assets in the hands of the executor or administrator, to be administered according to law.

ceeds to become assets.

SEC. 15. If the lien of such several judgments be of even date, and the proceeds of such sale shall not be sufficient to pay the whole, such proceeds shall be applied to the payment of such several judgments in proportion to their respective amounts.

If lien of such judgments be even, proceeds how applied.

SEC. 16. If such real estate, being or having been bound by the liens of several judgments, shall have been sold under a junior judgment, the executor or administrator shall state in his petition the fact of such sale; the name of the plaintiff in such junior judgment, the name of the purchaser, the dates and amounts of the several judgments, and the names of the persons in whose favor such several judgments were rendered.

If real estate, bound by lien of several judgments, be sold under junior judgment, fact to be stated in petition.

SEC. 17. The probate court shall thereupon order that the plaintiff in the judgment under which such real estate was sold, and the purchaser thereof, shall be notified of the filing of such petition, stating briefly the substance and prayer of the petition, and that, unless good cause to the contrary be shown, on the first day of the next term, an order will be made for the sale of the whole, or so much of such real estate, as will be sufficient to pay the prior judgment or judgments.

Plaintiff in junior judgment, and purchaser, to be notified of such petition; what the notice shall contain.

SEC. 18. Such notice shall be published as other notices are required to be published, in cases of petitions for the sale of real estate, in virtue of the provisions of this act.

Notice to be published, how

SEC. 19. The purchaser of such real estate shall have the privilege of paying such prior judgment or judgments at any time within six months from and including the first day of the term of the court at which he is notified to appear.

Purchaser privileged to pay prior judgment, or judgments, when.

SEC. 20. If the purchaser of the real estate, under such junior judgment, shall fail to pay such prior judgment or judgments within the time prescribed in the preceding section, such real estate shall be sold free from the incumbrance of the title derived from the sale under such junior judgment, and the proceeds of such sale shall be disposed of according to such provision of the tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth sections of this article, as shall be applicable to the facts of the case.

Failing to pay, real estate to be sold free from incumbrance.

Proceeds, how disposed of.

SEC. 21. The petition, to be filed according to the provisions of the ninth section of this article, shall be accompanied by a true account of his administration, a list of the debts due to and by the deceased, and remaining unpaid, and an inventory of the real estate and of the remaining personal estate, with its appraised value, and all the other assets in his hands, the whole to be verified by the affidavit of the executor or administrator.

Petition to be accompanied by true account of administration, &c.

Executor or administrator failing to make such application, others may.

Sec. 22. If such executor or administrator do not make such application, any creditor, or other person interested in the estate, may make such application, giving twenty days' notice to the executor or administrator.

Duty of executor before making such application.

Sec. 23. Every such executor or administrator, on or before the first day of the term of the court at which he is notified that such application will be made, shall file with the clerk of the court perfect accounts, lists and inventories, made out and verified as those required to accompany a petition by himself. If such executor or administrator fail to comply with this section, the court shall compel him to do so by attachment.

When such petition, accounts, &c. are filed, court shall order notice to be given.

Sec. 24. When such petition, and such accounts, lists and inventories shall be filed, the court shall order that all persons interested in the estate be notified thereof, and that unless the contrary be shown, on the first day of the next term of the court an order will be made for the sale of the whole, or so much of such real estate, as will pay the debts of the deceased. Such notice shall be published for six weeks in some newspaper in this territory, or by ten handbills, to be put at ten public places in the county in which the land lies, at least twenty days before the term of the court at which any such order will be made, in the discretion of the probate court.

When and how published.

Upon proof of publication, court to hear testimony, and if necessary, order sale.

Sec. 25. Upon proof of publication, the court shall hear the testimony, and may, if necessary, examine all parties on oath, touching the application, and make an order for the sale of such real estate, or any part thereof, in this territory, at public or private sale.

Personal estate may be reserved, and real estate sold.

Sec. 26. If any executor, or administrator, or other person interested in any estate, file a petition, setting forth the facts, and describing the real and personal estate, and praying that the personal estate may be reserved, and real estate be sold for the payment of debts, the same steps shall be taken, and the same proceedings and publication had as above directed, upon a petition to sell real estate for the payment of debts, and the court may order the whole, or any part of the personal estate, to be reserved, and the real estate, or any part of it, may be sold at public or private sale.

Real estate to be appraised before sale.

Sec. 27. Before any executor or administrator shall sell any real estate, or any interest therein by order of any court, he shall have it appraised by three disinterested householders of the county in which it lies.

Affidavit to be made by appraisers.

Sec. 28. Such appraisers shall make an affidavit that they will, according to the best of their abilities, view and appraise the estate to them shown, and they shall view and appraise the same, and deliver to the executor or administrator a certificate thereof, under their hands.

SEC. 29. In all sales of real estate made by any executor or administrator, he shall cause a notice, containing a particular description of the estate to be sold, and stating the time, place and terms of sale, to be published in some newspaper in this territory for four weeks, and shall put up a copy of such notice in ten public places in the county in which the sale is to be made, twenty days before the sale. If the probate court shall think it advisable, and so order, the publication of such notices in the newspaper may be dispensed with.

Notice of such sale of real estate to be given. How published.

SEC. 30. All public sales of real estate made by order of any court for the payment of debts, shall be made at the court house door of the county in which such estate is situated, on some day while some court of record is in session, and shall be conducted openly by auction.

Where sales of real estate shall be made, and how conducted.

SEC. 31. No real estate sold for the payment of debts, shall be sold at private sale for less than three-fourths of its appraised value, nor shall the executor or administrator directly or indirectly become the purchaser of such real estate at public sale, at less than three-fourths of its appraised value.

Not to be sold at private sale, nor shall executor or administrator purchase at less than three-fourths of its appraised value.

SEC. 32. At the next term of the probate court after such sale, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisement and a copy of the advertisement, which report shall be verified by affidavit, stating that he did not directly or indirectly purchase such real estate, or any part thereof, or any interest therein, and that he is not interested in the property sold, except as stated in the report.

Report of sale, how made.

SEC. 33. If such report and proceedings of the executor or administrator be not approved by the court, his proceedings shall be void, and the court may order a new sale, upon which the same proceedings shall be had as upon the original order.

If report not approved by court, new order to be made.

SEC. 34. If such report be approved by the probate court, such sale shall be valid, and the executor or administrator (or, if he be the purchaser, the clerk of the probate court) shall execute, acknowledge and deliver to the purchaser, a deed reciting the order of sale, and the court by which it was made, the certificate of appraisement, the advertisement, the time and place of sale, the report of the proceedings, and the consideration, and conveying to the purchaser all the right, title and interest which the deceased had in the same.

If report be approved, deed to be made.

SEC. 35. Such deed shall convey to the purchaser all the right, title and interest which the deceased had in such real estate at the

Effect of deed.

time of his death, discharged from liability for his debts, and shall be evidence of the facts therein recited.

Contract for the conveyance of real estate by testator, or intestate, how enforced.

Sec. 36. If any testator or intestate shall have entered into a contract in writing for the conveyance of any real estate, and shall not have executed the same in his lifetime, nor given power by will to execute the same, the other party, wishing a specific execution of such contract, may file a petition to the probate court, setting forth the facts, and praying that an order may be made that the executor or administrator execute such contract specifically by executing to him a deed for the same.

Affidavit to be annexed to petition.

Sec. 37. Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition.

Notice to be served on executor or administrator.

Sec. 38. A notice of such application, and a copy of the petition, shall be served on the executor or administrator twenty days before the first day of the term at which it is to be made.

Court to make an order for the specific performance of contract, except, &c.

Sec. 39. If the court, after hearing all parties, believe that specific execution of such contract ought to be made, it shall make an order that the executor or administrator execute such contract specifically, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their disabilities are removed, to appear and file their bill in chancery, to set aside such order for fraud or otherwise.

Upon such order, executor or administrator to execute deed.

Sec. 40. When any order for the specific execution of a contract shall be made, the executor or administrator shall execute and deliver to the petitioner a deed, and acknowledge it in open court, conveying the estate according to the order, and expressing therein the saving of the rights above named according to the order, and stating the date of the order, and the court at which it was made.

Effect of such deed.

Sec. 41. Such deed shall be as effectual as if it had been executed by the deceased.

Petition for specific performance, may be brought in superior court, in the first instance.

Sec. 42. The party entitled to such specific performance of a contract may bring his petition in some superior court of the county in the first instance, and if it be brought in the first instance, in the probate court, the executor, administrator, widow, or any heir or devisee of estate, may appear and allege that he is unwilling to have the same tried in the probate court, the court shall order the same to be certified to some superior court.

Superior court in such cases to proceed according to the practice in courts of chancery.

Sec. 43. If any such petition be thus filed or certified to such superior court, it shall proceed therein according to the practice of courts of chancery, and if it appears that such specific execution ought to be made, it shall make a decree for that purpose, in the same manner, and with the same reservations, as above required in cases of orders by the probate court.

Proceedings by executor or administrator for specific performance of contract made by testator or intestate.

SEC. 44. If any executor or administrator hold a bond, or any other instrument of writing, on the testator or intestate, for the conveyance of any real estate, which shall not have been completed within the lifetime of such testator or intestate, nor power by will given to execute the same, the executor or administrator shall proceed against his co-executor or co-administrator in the same manner as prescribed by this article in other cases; but if there be no such co-executor or co-administrator, he shall file his petition as herein provided, and the court shall appoint some suitable person to appear and manage the defence on the part of those interested, who shall have all the powers and perform the same duties required of executors or administrators, in such case, by this article.

In what case real state to be sold.

SEC. 45. If, upon the settlement of the accounts of any executor or administrator, it appear that the personal estate is not sufficient to satisfy all demands established against such estate, the probate court may make such order as it may think necessary for the sale of the real estate for that purpose, and the sale shall be conducted, and the same proceedings had in relation hereto, as is provided in this article in relation to the sale of real estate, for the payment of debts upon the petition of the executor or administrator, creditor or other person interested.

ARTICLE IV.

Of the allowances of demands against estates.

§ 1. Demands against estates classed.
2. After three years demands barred, saving to persons under disability.
3. Suits pending against deceased at his death, when and how classed as demands.
4. From what time other demands in action shall be considered as exhibited against estates.
5. Proceedings to establish demands, and from what time legally exhibited.
6. Executor or administrator to keep a list of demands exhibited.
7. Demands may be established in a court of record; copy of judgment to be exhibited to probate court.
8. Jurisdiction and duty of probate courts in allowing demands against estates.

§ 9. Court not to allow demand when estate is indebted to claimant, unless oath made or affidavit filed. Form of affidavit.
10. Court not to allow demand, when claimant is indebted to estate, without oath or affidavit of claimant. Nature of affidavit. Demand to be established by testimony.
11. Affidavit or oath may be made by agent in certain cases.
12. Written notice, containing a copy of the instrument or account sued on, to be given.
13. Notice, when, how and by whom served.
14. Notice may be waived in open court.

§ 15. Court to determine demands in a summary way.
16. Depositions in support of demands, how and when taken.
17. If the claim does not exceed twenty dollars, and neither party requires a jury, court may determine.
18. If the demand exceed twenty dollars, in what manner and by whom determined.
19. Proceedings when executor or administrator claims as creditor of the estate.
20. Who shall pay costs on allowance of demands.
21. Clerk to keep an abstract of judgments filed and demands established.
22. Demands to be classed, and satisfied according to classification.
23. Amount and class to be endorsed on claim and delivered to demandant.
24. In what order debts of deceased to be paid.
§ 25. Commencement of suits, &c.
26. Executor or administrator shall appoint an agent to act during temporary absence. Proceedings in case of failure.
27. Effect of notice to agent.
28. Proceedings in case of improper allowance.
29. Commissioner to be appointed to audit and settle demands, &c., his powers and duties, mode of proceeding. To make report.
30. Objections to report of commissioner, how and when made.
31. Creditor failing or neglecting to present his demand before commissioner, will not bar allowance by probate court, but leaves question of costs discretionary with court.
32. Compensation of commissioner.

Demands against estates classed.

SECTION 1. All demands against the estate of any deceased person shall be divided into the following classes: *First.* Funeral expenses. *Second.* Expenses of the last sickness, wages of servants, and demands for medicines and medical attendance during the last sickness of the deceased. *Third.* Debts due the territory. *Fourth.* Judgments rendered against the deceased in his lifetime; but if any such judgments shall be liens upon the real estate of the deceased and the estate shall be insolvent, such judgments as are liens upon the real estate shall be paid as provided in the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth sections of the third article of this act, without reference to classification, except the classes of demands mentioned in the first and second subdivisions of this section shall have precedence of such judgments. *Fifth.* All demands without regard to quality which shall be legally exhibited against the estate within one year after the granting of the first letters on the estate. *Sixth.* All demands thus exhibited, after the end of one year and within two years after letters granted. *Seventh.* All demands thus exhibited after the expiration of two years and within three years after granting of such letters. (*m*)

After three years, demands barred, &c.

SEC. 2. All demands, not thus exhibited within three years, shall be forever barred, saving to infants, persons of unsound

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(*m*) See Gamble vs. Hamilton, 7 Missouri Rep., 469.

mind, imprisoned or absent from the United States, and married women, three years after the removal of their disabilities. (*n*)

SEC. 3. All actions pending against any person at the time of his death, which, by law, survive against the executor or administrator, shall be considered demands legally exhibited against such estate, from the time such action shall be revived, and classed accordingly.

Suits pending against deceased at his death, when and how classed as demands.

SEC. 4. All actions commenced against such executor or administrator, after the death of the deceased, shall be considered demands legally exhibited against such estate, from the time of serving the original process on such executor or administrator.

From what time other demands in action shall be considered as exhibited.

SEC. 5. Any person may exhibit his demand against such estate, by serving upon the executor or administrator a notice in writing stating the nature and amount of his claim, with a copy of the instrument of writing or account upon which the claim is founded, and such claim shall be considered legally exhibited from the time of serving such notice. (*o*)

Proceedings to establish demands, and from what time legally exhibited.

SEC. 6. Every executor and administrator shall keep a list of all demands thus exhibited, classing them, and make return thereof to the probate court every year, at the term at which he is to make settlement.

Executor or administrator to keep a list of demands exhibited.

SEC. 7. Any person having a demand against an estate, may establish the same by the judgment or decree of some court of record, in the ordinary course of proceeding, and exhibit a copy of such judgment or decree, and shall also exhibit copies of all judgments and decrees rendered in the lifetime of the deceased, to the probate court. (*p*)

Demands may be exhibited in a court of record. Copy of judgment exhibited, &c.

SEC. 8. The probate court shall have jurisdiction to hear and determine all demands against any estate, and a concise entry of the order of allowance shall be made on the record of the court, which shall have the force and effect of a judgment. (*q*)

Jurisdiction and duty of courts in allowing demands.

(*n*) See Labeaume vs. Hempstead, 1 Missouri Rep., 772, and also Miller vs. Woodward and Thornton, 8 Missouri Rep., 169.

(*o*) A. died, leaving his wife devisee and executrix during her life or widowhood. After proving the will, the widow contracted several debts for the benefit of the estate, for which she gave her individual notes, and then intermarried with M. Held that the administrators of the estate appointed by the county court on the marriage of the widow, pursuant to the provisions of the will, were liable to M. for the amount of these notes, as so much money paid to the use of the estate. Maupin vs. Boyd and Bryant, 5 Missouri Rep., 106. A person having a claim against a decedent, and wishing to give legal notice to the administrator of such claim, must state in his notice, its nature; whether he claims it in his own right, or in right of his wife. Ibid, 334.

(*p*) A judgment against an administrator is not a lien on the lands of the intestate, although the judgment be de bonis testatoris. 1, Missouri Rep., 764.

(*q*) When a demand is presented to the county court for allowance against a decedent's estate, and disallowed, the decision of the court is a judgment, and is attended with all the legal consequences of a judgment of a court of record at common law: consequently if the claimant fails to prosecute his appeal in the manner pointed out in the statute, the matter be-

Court not to allow demand when estate is indebted to claimant, unless oath made or affidavit filed.

Sec. 9. No probate court shall allow any demand against any estate, when the estate is indebted to said claimant after allowing all just credits and offsets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating to the best of his knowledge and belief, he has given credits to the estate for all payments and offsets to which it is entitled, and that the balance claimed is justly due.

Court not to allow demands when claimant is indebted to estate, without oath or affidavit of claimant.

Nature of affidavit.

Demand to be established by testimony.

Sec. 10. No probate court shall allow any demand against any estate, when the claimant is indebted to said estate, after allowing all just credits and offsets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating to the best of his knowledge and belief, he has given credits to the estate for all payments and offsets to which it is entitled, and that his account or demand, as presented, is correctly stated; and the affidavit in this section and the preceding one shall not be received as any evidence of the demand, but the same shall be established by competent legal testimony, before it is allowed or adjusted.

Affidavit or oath may be made by agent in certain cases.

Sec. 11. The affidavit or oath required by the two preceding sections may be made by an agent of the claimant, when such agent has had the management and transaction of the business out of which such demand originated, or when such agent has had the means of knowing personally the facts required to be sworn to by those sections; and administrators and executors shall not be required to make such affidavit in relation to any demand in favor of the estate, which accrued prior to their letters of administration.

Written notice containing a copy of the instrument or account sued on to be given.

Sec. 12. Any person desiring to establish a demand against any estate, shall deliver to the executor or administrator, a written notice, containing a copy of the instrument of writing or account on which it is founded, and stating that he will present the same for allowance at the next term of the probate court. (r)

Notice, when, how, and by whom served.

Sec. 13. Such notice shall be served on the executor or administrator ten days before the beginning of such term of the court, and may be served by any sheriff or constable, or by any competent witness, who shall make affidavit to such service.

Notice may be waived in open court.

Sec. 14. The executor or administrator may appear in court and waive the service of any such notice.

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comes res adjudicata, and so he is forever barred. McKinney vs. Davis, 6 Missouri Rep., 501. An order from the county court that an administrator retain all the money of the estate which may come into his hands, subject to the order of the county court, for the purpose of paying all administrators and guardians such sums as may be due from the estate, in preference to all other demands, amounts to a judgment final and conclusive in its nature, and a writ of error will lie. Gamble vs. Hamilton, 7 Missouri Rep., 469.

(r) See note (o) supra.

Court to determine demands in a summary way.

SEC. 15. The probate court shall hear and determine all demands in a summary way, without the form of pleading, and shall take the evidence of competent witnesses, or other legal evidence. (*s*)

Depositions in support of demands, how and when taken.

SEC. 16. Any person may take depositions in support of his demand at his own expense, if he first procure the written consent of the executor or administrator, and such depositions may be taken in the ordinary manner, at such time and place as may be agreed upon, and read in evidence in support of such demand.

Proceedings if the claim does not exceed twenty dollars.

SEC. 17. If the demands do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand.

If the demand exceed twenty dollars, in what manner and by whom determined.

SEC. 18. If the demand exceed twenty dollars and either party require a jury, one shall be immediately summoned, and the trial shall be conducted in a summary manner, without the form of pleading, and when the demand is not due at the time of trial, the court or jury may adjust the same by rebating therefrom at the rate of six per cent. per annum from the time of trial until due.

Proceedings when executor or adm'r claims as creditor of the estate.

SEC. 19. Any executor or administrator may establish a demand against his testator or intestate, by proceeding against his co-executor or co-administrator in the manner prescribed for other persons; but if there be no co-executor or co-administrator, he shall file his claim and other papers, and the court shall appoint some suitable person to appear and manage the defence on the part of the estate.

Who shall pay cost on allowance of demands.

SEC. 20. When a demand shall be presented to the probate court for allowance, if the demand be allowed, the estate shall pay the costs; if disallowed, the party presenting the claim shall pay the costs.

Clerk to keep an abstract of judgments filed, &c.

SEC. 21. The clerk of the probate court shall keep an abstract of all judgments of other courts filed, and of all demands established in the probate court against such estate, which shall show their amount, date, class, and to whom payable.

Demands to be classed, and satisfied according to classification.

SEC. 22. If any judgment of a court of record be filed in the probate court, and when demands are allowed against any estate in the probate court, such court shall determine its class, and the clerk shall make an entry thereof in his abstract, and when thus classed, the executor or administrator may satisfy such demand according to such classification.

Amount and class to be endorsed on claim.

SEC. 23. When any such demand has been allowed, the clerk shall endorse on the back thereof the amount allowed thereon,

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(*s*) An administrator may avail himself of an equitable defence to a demand, presented to the county court for allowance against a decedent's estate. 6 Missouri Rep., 145.

and the class to which it belongs, and deliver the same to the demandant.

In what order debts of deceased to be paid.

Sec. 24. All demands against any estate shall be paid by the executor or administrator, as far as he has assets, in the order in which they are classed, and no demand of one class shall be paid until all previous classes be satisfied, and if there be not sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts.

Commencement of suits, &c.

Sec. 25. If any person commence a suit of any kind, in any court, against an estate, within one year from the date of administration, he may recover judgment, but shall pay all costs.

Executor or administrator shall appoint an agent to act during temporary absence.

Proceedings in case of failure.

Sec. 26. If any executor or administrator shall temporarily absent himself from this territory, he shall appoint an agent in writing (and file such appointment in the office of the court having jurisdiction of his testator or intestate's estate), to whom notice of demands against his testator or intestate's estate, as provided in the fifth and tenth sections of this article, may be given; and upon failure to appoint such agent, such notice may be filed in the office of the court having jurisdiction of the estate.

Effect of notice to agent.

Sec. 27. Notice given to such agent, or filed, as aforesaid, among the papers relating to the estate against which the demand is claimed, shall be as effectual as if it had been given to the executor or administrator.

Proceedings in case of improper allowance.

Sec. 28. If the executor or administrator shall, within four months after any demand shall have been allowed, upon notice given as prescribed in the two preceding sections, file in the office, of the court having jurisdiction of the estate, the affidavit of himself or some other credible person, stating that the affiant has good reason to believe, and does believe, that such demand has been improperly allowed, the court shall vacate such order of allowance, and try the matter anew, and allow or reject such demand as shall be right; and if upon such new hearing such demand shall be allowed, it shall be classed and paid as if such new hearing had not been granted.

Commissioner to be appointed to audit and settle demands.

His powers, duties and mode of proceeding.

Sec. 29. It shall be the duty of the probate court, at the next term after letters testamentary or of administration are granted on any estate, (if in their opinion the interest of the estate requires it,) to appoint some suitable disinterested person as commissioner, whose duty it shall be to audit and settle all demands exhibited to him against said estate, not exceeding the sum of one hundred dollars. He shall fix upon such times and such places as shall be most convenient to the largest number of creditors of such estate, and give reasonable notice thereof to the executor or administrator, and to the creditors of the estate; the time and manner of the notice to be prescribed by the court. The commissioner shall make out an exhibit of all demands brought before him, noting thereon which items he allows and which he rejects, or how much of each he allows or rejects, and in what classes those allowed are to be paid, and file such exhibits with the clerk of the probate court at its next term, which shall remain in the office of the clerk of the court until the end of the next following term. The commissioner shall have power to administer oaths to witnesses, and shall administer to all claimants the oath required by the ninth section of this article.

To make report.

Objections to report by commissioner, how and when made.

Sec. 30. If any executor or administrator, or any claimant, shall, before the end of the next term after the one at which the commissioner's report shall have been filed in the clerk's office, object, in writing, to the decision of the commissioner, as to any item therein, the same shall be tried before the probate court, as is now provided by law, the court giving to each party reasonable time to procure his witnesses; and such report, as to all such items not so objected to, shall be confirmed by the court and payment ordered accordingly.

Creditor failing or neglecting to present his demand before commissioner, will not bar allowance by probate court.

Sec. 31. If any creditor shall have an opportunity to present his demand before such commissioner, and shall fail or neglect to do so, he shall not be prevented from having the same allowed by the probate court, as is now provided for by law, but the probate court may, in its discretion, compel him to pay all costs attending the establishment and allowance of the same.

Compensation of commissioner.

Sec. 32. The court shall allow said commissioner, out of said estate, a reasonable compensation for his services.

ARTICLE V.

Of the settlement of their accounts.

§ 1. Accounts and settlements, in what manner to be recorded by the clerk.
2. Annual settlements to be made until administration be completed.
3. Clerk to keep a docket of executors and administrators, date of their letters and term of settlement.
4. List to be put up by the clerk, when and where.
5. Failure to make settlement, citation to issue.
6. Citation not served, alias to issue; may be served or published.
7. Proceedings of the court after service or publication.
8. Court may revoke letters of delinquent and attach. Delinquent to pay costs.
§ 9. Accounts to be settled; what charges, expenses and disbursements allowed.
10. Claim for which disbursements have been made, must be shown upon settlement to have been allowed by the court, or proof produced.
11. On settlement, expenses to be paid; balance on hand to be apportioned among creditors.
12. On every settlement, how to proceed till debts are paid or assets exhausted.
13. Executions for demands allowed against estates, when and against whom issued.
14. Execution not satisfied, *scire facias* may issue against securities.

§ 15. *Scire facias* returned, served, proceedings thereon.
16. Notice of final settlement, when and how published.
§ 17. Final settlement how to be conducted.
18. On final settlement, what debts charged in the inventory as due to the estate to be credited.

Accounts and settlements, in what manner to be recorded by the clerk.

SECTION 1. The clerk of each probate court shall provide well bound books, and enter therein the accounts and settlements of all executors and administrators made in the court, in such manner as to form a complete record of all such accounts settled in that court.

Annual settlements to be made until administration be completed.

SEC. 2. Every executor and administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the probate court, at its first term after the end of one year from the date of his letters, and at the corresponding term of such court every year thereafter, until the administration be completed.

Clerk to keep a docket of executors and administrators, date of their letters.

SEC. 3. The clerk of the probate court shall keep a docket, and enter therein a list of all executors and administrators who have not made final settlement of their accounts, the date of their letters, and the term at which they are required to make settlement.

List to be put up by the clerk, when and where.

SEC. 4. The clerk shall put up in some conspicuous place in his office, thirty days before each term, a list of the executors and administrators, whose settlements are required to be made at that term.

Failure to make settlement, citation to issue.

SEC. 5. If any executor or administrator fail to present such settlement, the clerk shall immediately issue a citation, to any county in the territory, requiring him to present his accounts for settlement at the next term of the probate court, and show cause why an attachment should not issue against him for not exhibiting his accounts at the term at which he was required to settle.

Citation not served, alias to issue; may be served or published.

SEC. 6. If such citation be not served, the clerk shall, under the direction of the court, issue an alias citation, which may be served, or may be published in some newspaper in this territory, one month before the return thereof.

Proceedings of the court after service or publication.

SEC. 7. If, after such service or publication, no cause to the contrary be shown, such executor or administrator may be fined by the probate court, not exceeding one hundred dollars, to the use of the county, and such executor or administrator shall be liable upon his bond for failing to settle.

Court may revoke letters of delinquent and attach.

SEC. 8. The probate court may revoke the letters of such delinquent, and may issue attachment and other process to compel such settlement, directed to any county in the territory, and in all such cases such delinquents shall pay costs.

SEC. 9. When any executor or administrator shall present his account for settlement, the probate court shall settle the same according to law, allow all reasonable charges for the expenses of administration, funeral expenses, and all disbursements and appropriations made by order of the court, and a reasonable compensation for the trouble and expenses of the executor or administrator.

Accounts to be settled, what charges, expenses and disbursements allowed.

SEC. 10. Upon every settlement, the executor or administrator shall show that every claim for which disbursements have been made, has been allowed by the court according to law, or shall produce such proof of the demands as would enable the claimant to recover it in a suit at law.

Proceedings upon claims for which disbursements have been made.

SEC. 11. At every settlement, the court shall ascertain the amount of money of the estate which has come to the hands of such executor or administrator from all sources, and the amount of debts allowed against such estate; and if there be not sufficient to pay the whole of the debts and expenses of administration, the money remaining after paying the expenses of administration, shall be apportioned among the creditors, according to this act, and the court shall order that such executor or administrator pay the claims allowed by the court according to such apportionment, reserving apportionments made on claims which remain undecided, until decision be had thereon.

On settlement, expenses to be paid, balance on hand to be apportioned among creditors.

SEC. 12. The probate court, upon every settlement, shall proceed in like manner till all the debts be paid, or the assets exhausted; and if, upon such settlement, there shall be money enough to satisfy all demands of any one class legally exhibited against such estate, the court shall order the whole to be paid.

On every settlement, how to proceed till debts are paid, or assets exhausted.

SEC. 13. If any executor or administrator fail to pay any claim thus ordered to be paid, according to the two preceding sections, when demanded, the clerk of the probate court, on application of such creditor, and being satisfied that such demand has been made, shall issue execution for the amount ordered to be paid and costs, against the property, goods, chattles and real estate of such executor or administrator.

Executions for demands allowed against estates, when and against whom issued.

SEC. 14. If any such execution be returned unsatisfied, the creditor may sue out of the probate court a scire facias against any one or more of the securities of such executor or administrator, referring to the bond, the order of payment, the execution and return, and requiring such security to show cause why judgment should not be rendered against him for the amount ordered to be paid and still unsatisfied.

Execution not satisfied, *scire facias* may issue against securities.

SEC. 15. Such scire facias may be directed to, and served in any county in this territory, and if, upon the return thereof, good

Scire facias returned served, proceedings thereon.

cause to the contrary be not shown, the court shall render judgment against such security for the amount unpaid, and costs, and award execution therefor.

Notice of final settlement, when and how published.

SEC. 16. If any executor or administrator wish to make final settlement, he shall publish for four weeks, in some newspaper in this territory, a notice to all creditors and others interested in the estate, that he intends to make final settlement at the next term of the court.

Final settlement, how to be conducted.

SEC. 17. If it appear to the court that such notice was duly published, and that the estate of the deceased has been fully administered, the court shall make final settlement, which shall be conducted as annual settlements.

On final settlement, what debts charged in the inventory as due to the estate, to be credited.

SEC. 18. At his final settlement, the court shall give credit to the executor or administrator, for debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debt was not really due to the estate, or that it has been balanced or reduced by offsets in any court of competent jurisdiction, or the debtor was insolvent, or that from any other cause it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence.

ARTICLE VI.

Of the distribution of the estate.

§ 1. Distribution, or payment of legacies, when to be made within one year after date of letters.
2. Legacies, when to be paid; bond to refund, when and by whom given.
3. Payment of legacies and distribution of shares, when and how made.
4. If distribution cannot be made in kind, sale may be ordered and money distributed.
5. Notice of application to sell for the purpose of distribution, how and when to be given.
6. When sale is ordered, claims of distributees to be adjusted.
7. If distributee become purchaser, his receipt good for amount of his share.
8. Distribution, how made; when real estate sold to pay debts.
9. Legatees and distributees compelled to refund; when and how.
10. Proceedings on failing or refusing to refund. Notice to be given.
11. Court may order appropriations for the support of minor children, when.
§ 12. Appropriation for widow until dower is signed, out of what fund to be made.
13. Court, in its discretion, may order the estate to be delivered up to the widow, when.
14. On final settlement, money of distributee or legatee, when to be loaned out.
15. If legatee or distributee do not appear within one year and claim his share, court may order it to be paid into territorial treasury.
16. Proceedings when such legacy is paid into the territorial treasury.
17. Mode of obtaining such legacy, &c., by legatee or distributee, prescribed.
18. If, on eyear after final settlement, property unclaimed remain in the hands of executor or administrator, court shall order it to be sold.
19. Administration on estate of non-resident. Estate, how disposed of.
20. On final settlement, residue of personal estate, how disposed of.
21. If non-resident insolvent, estate to be equally divided among his creditors.

§ 22. Estate not to be sent out of the territory till creditors here receive their proportion.
23. Citizen creditors to receive their proportion first.
24. Residue to be paid to other creditors, how.
§ 25. No one to receive more than his share.
26. If any balance of estate remains, it shall be transmitted to foreign executor or administrator.
27. Compensation of executors and administrators.

Distribution, &c., when to be made within one year after date of letters.

SECTION 1. Executors and administrators shall not be compelled to make distribution, or pay legacies, until one year after the date of the letters, unless the legacies specified would be perishable, or subject to injury, if retained one year.

Legacies, when to be paid; bond to refund, when and by whom given.

SEC. 2. No executor or administrator shall be compelled to pay legacies or make distribution within three years after the date of his letters, unless ordered to do so by the court, until bond and security be given by the legatee or distributee to refund his due proportion of any debt which may afterwards be established against his estate, and the costs attending the recovery thereof. But the widow shall not be required to give such bond before she receive the property selected by her under this act.

Payment of legacies and distribution of shares, when and how made.

SEC. 3. If upon any settlement it appear that there is sufficient money to satisfy all the demands against an estate, the court shall order the payment of legacies and distribution of shares, as in the case of debts, except that specific legacies shall be first satisfied. (*t*)

If distribution cannot be made in kind, sale may be ordered and money distributed.

SEC. 4. If slaves or other personal property descend, and an equal division thereof cannot be made in kind, the probate court may order the sale of slaves or other personal property, (prescribing the time, place, manner and terms of sale,) and cause the money to be distributed according to the rights of those entitled to distribution. (*u*)

Notice of application to sell for the purpose of distribution, how and when to be given.

SEC. 5. Each person entitled to distribution, not applying therefor, shall be notified in writing of such application ten days before such order shall be made; or if such person do not reside in this territory, a notice of such application shall be published, in some newspaper in this territory, eight weeks before such order shall be made.

When sale is ordered, claims of distributees to be adjusted.

SEC. 6. When such order for the sale of slaves or personal estate shall be made by the court, it shall settle the claims of the distributees, and order the person selling such property to distri-

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(*t*) Where the records of the county court show that all debts have been paid, that the amount of property is ascertained, and three years elapsed since administration was granted, a distributee may maintain his action of debt on the administrator's bond, in the circuit court, against him or his securities. State vs. Rankin, 4 Missouri Rep., 426; Tompkins, J., dissenting. The circuit court, as a court of chancery, has concurrent original jurisdiction with the county court, in compelling executors and administrators to make distribution and pay legacies. 5 Missouri Rep., 469. Tompkins, J., dissenting. See section 1, article 1, of the act to regulate practice in the courts of chancery.

(*u*) See the act concerning dower, section 17.

bute the money arising therefrom according to the rights of each person.

If distributee become purchaser, his receipt good for amount of his share.

SEC. 7. If any distributee become a purchaser of such property, his receipt for the amount of his share shall be received in payment of an equal amount of the purchase money, and the court shall allow the amount of such receipt as so much distributed under the order of the court.

Distribution, how made, when real estate sold to pay debts.

SEC. 8. If real estate be sold for the payment of debts in lieu of the personal estate under this act, the court in making distribution of the personal estate reserved, shall cause the same to be appraised by three disinterested persons sworn for that purpose, and shall allow to the widow only such amount as she would have been entitled to, had the amount of debts, paid by money made by the sale of real estate, been paid out of the personal estate.

Legatees and distributees, compelled to refund, when and how.

SEC. 9. If, after the payment of legacies, or distributions, it becomes necessary that the same, or any part thereof, be refunded for the payment of debts, the court, on application, shall apportion the same among the legatees or distributees, according to the amount received by them, except that specific legacies shall not be required to be refunded, unless the residue be not sufficient to satisfy such debts.

Proceedings on failing or refusing to refund. Notice to be given.

SEC. 10. If any legatee or distributee fail to refund, according to such order, the court shall, on motion of the executor or administrator, ten days' notice in writing having been given to the legatee or distributee, enter judgment for the amount apportioned to him.

Court may order appropriations for the support of minor children, when.

SEC. 11. The probate court, as occasion may require, may order such appropriations for the support of minor children of the deceased, not otherwise provided for, as will not prejudice the rights of creditors.

Appropriation for widow, until dower be assigned.

SEC. 12. Until the widow's dower be assigned, the court shall order such sum to be paid to her out of the hire of slaves and rent of real estate, as shall be in proportion to her interest in the slaves and real estate.

Court, in its discretion, may order the estate to be delivered up to the widow.

SEC. 13. If, upon the return of the inventory and appraisement, it appears to the court that the whole amount of the estate is not more than that to which the widow is by law entitled, without being subject to the payment of debts, and that there are no debts due the estate, or so small that they would not defray the expenses of collection and of administration, the probate court may, in its discretion, make an order that such estate be delivered to the widow, and that all further advertisements, settlements and other proceedings under said administration be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with.

On final settlement, money of distributee, or legatee, when to be loaned out.

SEC. 14. If, upon final settlement, it appear that any legatee or distributee is non-resident, or from any other cause is not in a situation to receive his share, and give a discharge therefor, or does not appear by himself, or agent, to receive the same, the probate court shall order the executor or administrator to lend out the money on good security, for such limited time as the court may direct, not exceeding one year.

Proceedings if legatee or distributee do not appear within one year.

SEC. 15. In all cases when the legatee or distributee shall not appear within one year after final settlement by the executor or administrator, and claim his share, the probate court shall order the same to be paid into the territorial treasury.

Proceedings when such legacy is paid into the territorial treasury.

SEC. 16. When any share shall be paid into the treasury, the executor or administrator shall take from the treasurer duplicate receipts, one of which he shall file in the office of the auditor, who shall charge the treasurer with the amount, and the other with the clerk of the probate court, ordering the share to be paid into the treasury, and the court shall credit the executor or administrator therewith.

Mode of obtaining such legacy, &c., by legatee or distributee, prescribed.

SEC. 17. When any legatee or distributee shall appear and claim any share paid into the treasury, the probate court before whom the final settlement was made, being first satisfied of his right, shall grant him a certificate, under its seal; and on presentation of the certificate to the auditor, he shall draw his warrant on the treasury for the amount.

If, one year after final settlement, property unclaimed remain in the hands of executor or administrator, court shall order it to be sold.

SEC. 18. If, after the expiration of one year after the final settlement, there should remain in the hands of the executor or administrator, slaves or other personal property unclaimed by the legatee or distributee, the court shall order the same to be sold; and the proceeds paid into the territorial treasury, and the same may be drawn therefrom in the manner provided in the preceding section.

Administration on estate of non-resident. Estate, how disposed of.

SEC. 19.* When administration shall be taken in this territory on the estate of any person who, at the time of his decease, was an inhabitant of any other state or country, his real estate found here, after the payment of his debts, shall be disposed of according to his last will, if he left any, duly executed according to the laws of this territory, and his personal estate according to his last will, if he left any, duly executed according to the laws of his domicil; and, if there should be no such will, his real estate shall descend according to the laws of this territory, and his personal estate shall be distributed and disposed of, according to the laws of the state or country of which he was an inhabitant. (*v*)

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* Sec. 19 to sec. 26 inclusive, are only declaratory of the common law.

On final settlement residue of personal estate, how disposed of.

SEC. 20. Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this territory, the residue of the personal estate, if any, may be distributed and disposed of, in manner aforesaid, by the probate court in which the estate is settled, or it may be transmitted to the executor or administrator, if there be any, in the state or country where the deceased had his domicil, as the court, under the circumstances, shall think best.

If non-resident insolvent, estate how divided among creditors.

SEC. 21. If such deceased person died insolvent, his estate found in this territory shall, as far as practicable, be so disposed of, that all his creditors here and elsewhere may receive an equal share in proportion to their respective debts.

Estate not to be sent out of the territory till creditors receive their proportion.

SEC. 22. To this end, his estate shall not be transmitted to the foreign executor or administrator, until his creditors, who are citizens of this territory, shall have received their just proportions that would be due to them if the whole of the estate of the deceased, wherever found, were divided among all the said creditors in proportion to their respective debts, without preferring any one species of debt to another.

Citizen creditors to receive their proportion first.

SEC. 23. In such case, no creditor, not being a citizen of this territory, shall be paid out of the assets found here, until those who are citizens shall have received their just proportions, as provided in the preceding section.

Residue to be paid to other creditors, how.

SEC. 24. If there be any residue after such payment to the citizens of this territory, the same may be paid to any other creditors who shall duly have proved their debts here, in proportion to the amount due to each of them respectively.

No one to receive more than his share.

SEC. 25. No one shall receive more than would be due to him if the whole estate were divided rateably among all the creditors.

If any balance of estate remains, it shall be transmitted to foreign executor or administrator.

SEC. 26. The balance, if any, may be transmitted to the foreign executor or administrator, or, if there be none such, it shall, after the expiration of three years from the appointment of the administrator, be distributed rateably among all the creditors, citizens and others, who shall have proved their debts in this territory.

Compensation of executors and administrators.

SEC. 27. Executors and administrators shall be allowed for their trouble not exceeding six per centum on the whole amount of personal estate, and on the money arising from the sale of lands, with such additional allowance for hiring out slaves, leasing real

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(*v*) See Story's conflict of laws, 391, and 403 to 410. Edition of 1834.

estate, and collecting and preserving the estate, as the probate court shall deem reasonable. (*w*)

ARTICLE VII.

Of proceedings against executors, administrators and securities.

§ 1. Any creditor may suggest a devastavit, when.
2. Upon such application, court to direct an issue.
3. Costs. Judgment. How proceeds applied.
4. If the waste is wilful and fraudulent, applicant to recover double the amount wasted.
5. Action of waste, or suit on administration bond, after final settlement, when brought and effect of the judgment.
§ 6. Execution on the judgment, against whom and what estate to issue.
7. Proceeds of executions on judgments thus recovered, how to be applied.
8. The bond of an executor or administrator may be sued on, suit how and by whom brought.
9. Court how to proceed for disobedience of any order made in pursuance of this act.

Any creditor may suggest a devastavit, when.

SECTION 1. If upon the settlement of any executor or administrator, there be not sufficient assets to pay all the demands against the estate, any creditor may suggest that he has not made a just account of the assets in his hands, and apply for an enquiry into the same.

Upon such application, court to direct an issue.

SEC. 2. Upon such application, the court shall direct an issue to be made up, whether there be waste or not, which shall be tried as demands against an estate.

Costs Judgment. How proceeds applied.

SEC. 3. If no waste be found, the applicant shall pay the costs; but if waste be found, judgment shall be recorded in favor of the applicant against such executor or administrator, of his own proper estate, for the amount wasted, and costs, and the money collected shall be applied to the payment of the debt due to the applicant, and the residue shall be apportioned among the creditors.

If waste is wilful and fraudulent, applicant to receive double.

SEC. 4. If it appear that such waste was committed wilfully and fraudulently, the applicant shall recover double the amount wasted, with costs, to be apportioned as aforesaid.

Action of waste, or suit on administration bond, after final settlement, when brought and effect of the judgment.

SEC. 5. After final settlement of any estate found to be insolvent, any creditor, or other person interested therein, may bring an action of waste, or a suit on the administration bond, and assign and prove, as a breach of the condition, any waste or

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(*w*) Where an allowance of a gross sum is made by the county court to executors or administrators as a compensation for their services, it must be equally divided, and one cannot retain the whole sum on the ground that the other had rendered no services. The county court may, however, where one has performed more than his equal share of labor, allow him a compensation proportioned to his services. Smart vs. Fisher, 7 Missouri Rep., 580.

mismanagement of the estate, and have judgment against the executor or administrator for the whole value of the assets wasted or mismanaged, as he could have done if they had been regularly accounted for, with costs.

Execution on judgment, against whom and what estate to issue.

SEC. 6. Upon such judgment, execution may issue against the private estate of such executor or administrator, and his settlement shall only be conclusive so far as he has applied the assets pursuant to the apportionment made by the court for the payment of debts.

Proceeds of executions on such judgments, how to be applied.

SEC. 7. The proceeds of all executions, on any judgments thus recovered, shall be applied to the payment of the debt due to the person suing, and the residue shall be apportioned among the creditors.

The bond of an executor or administrator may be sued on; suit how and by whom brought.

SEC. 8. The bond of any executor or administrator may be sued on, at the instance of any party injured, in the name of the territory, to the use of such party, for the waste or mismanagement of the estate, or other breach of the condition of such bond, and the damages shall be assessed thereon as on bonds with collateral conditions. (*t*)

Court, how to proceed for disobedience of any order made in pursuance of this act.

SEC. 9. The probate court, for disobedience to any order made in pursuance of this act, may issue attachment, imprison the body, or proceed by sequestration of land and goods, as fully as a court of chancery may do, and may issue their process for that purpose, directed to any county, and cause it to be served therein.

ARTICLE VIII.

Of appeals.

§ 1. Appeals from the probate to the circuit court, in what cases allowed.
2. Appeals, when to be taken.
3. Application for appeal, affidavit to be filed, and by whom.
4. Appellant to file bond. Its conditions. Executor or administrator not required to give bond.
5. Affidavit and bond filed, appeal to be granted; how far a supersedeas.
6. When appeal taken, clerk to transmit transcript and original papers to the circuit court.
7. Upon filing of transcript, court shall be possessed of the cause and shall try it *de novo.*
8. Proceedings and original papers to be certified to the court whence the appeal was taken, how proceeded on.

Appeals from the probate to the supreme court, in what cases allowed.

SECTION 1. Appeals shall be allowed from the decision of the probate court to the supreme court, in the following cases: *First*, On all demands against an estate exceeding ten dollars.

(*t*) An action of covenant will not lie on an administrator's bond; Clark vs. Murphy et al. 1 Missouri Rep., 114. A suit on an administrator's bond must be in the name of the governor of the state, (now the state of Missouri,) and not in the name of the party injured; 1 Missouri Rep., 531. Where the securities of an administrator plead his death before the

Second, On all settlements of executors and administrators. (*u*) *Third,* On all apportionments among creditors, legatees or distributees. *Fourth,* On all orders directing the payment of legacies, making distribution, or making allowances to the widow. *Fifth,* On all orders for the sale of personal estate, because distribution cannot be made in kind. *Sixth,* On all orders for the sale of real estate or slaves. *Seventh,* On judgments for waste. *Eighth,* On proceedings to recover balances escheated to the territory. *Ninth,* On orders revoking letters testamentary or of administration. (*v*) *Tenth,* On orders making allowances for the expenses of administration. *Eleventh,* On orders for the specific execution of contracts. *Twelfth,* On orders compelling legatees or distributees to refund, and in all other cases where there shall be a final decision of any matter arising under the provisions of this act.

Appeals, when to be taken.

Sec. 2. All appeals shall be taken during the term at which the decision complained of is made.

Application for appeal, affidavit to be filed, &c.

Sec. 3. The applicant for such appeal, his agent or attorney, shall file an affidavit that the appeal is not taken for the purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the decision of the court.

Appellant to file bond.

Its condition. Executor or administrator not required to give bond.

Sec. 4. Every such appellant shall file in the court the bond of himself or some other person, in a sum and with security approved by the court, conditioned that he will prosecute the appeal, and pay all debt, damages and costs that may be adjudged against him. This act shall not be so construed as to require any executor or administrator to enter into bond in order to entitle him to to an appeal.

Affidavit and bond filed, appeal to be granted; how far a supersedeas.

Sec. 5. After such affidavit and bond have been filed, the appeal shall be granted, but shall not be a supersedeas in any oth-

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time for filing the inventory, and in the same plea denied that goods had come to his hands—held, that the first part of the plea was not traversable; 1 Missouri Rep., 686. Damage may be assessed for a failure to make and return an inventory; *Ibid.* A breach, setting out a failure to make out annual and final settlements, is well assigned; Devore vs. Pitman, 3 Missouri Rep., 179. When a guardian put an administrator's bond in suit, for his *own use*, he was allowed to recover only costs paid by himself; to recover the portion due his ward, it was held necessary to put the bond in suit *for their use;* Devore vs. Pitman, 3 Missouri Rep., 182. A prior and subsequent administrator of the same estate cannot be sued jointly on their separate bonds; Miller vs. Hays, Missouri Rep., 434; The State vs. Pratte and St. Genome, 8 Missouri Rep., 286.

(*u*) The supreme court will not examine the evidence and correct errors in fact, but will only notice the errors in law, as appears upon the record in cases of settlement of estates; Thouteau vs. Consoue, 1 Missouri Rep., 350. Jones dissenting.

(*v*) An appeal lies from the decision of the county court revoking letters of adminisation; such appeal, however, does not operate as a supersedeas. The provisions of the tute concerning the supersedeas, only applies to those cases in which the appellant is judged to pay a debt; Mullanphy vs. St. Louis County Court, 6 Missouri Rep., 563.

er matter relating to the administration of the estate, except that from which the appeal is specially taken.

When appeal taken, clerk to transmit a transcript to court.

Sec. 6. When such appeal is taken, the clerk shall transmit to the clerk of the supreme court a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto.

Upon filing of transcript, court shall be possessed of the cause and try it *de novo*.

Sec. 7. Upon the filing of such transcript and papers in the office of the clerk of the supreme court, the court shall be possessed of the cause, and shall proceed to hear, try and determine the same anew, without regarding any error, defect or other imperfection in the proceedings of the probate court.

Proceedings, &c., to be certified to the court whence the appeal was taken.

Sec. 8. The clerk of the supreme court shall certify a transcript of the record and proceedings, and the original papers, to the court whence the appeal was taken, who shall proceed according to the decision of the supreme court.

This act to take effect and be in force from and after its passage.

CHAPTER 2.

ADMINISTRATORS PUBLIC.

An Act respecting public administrators.

§ 1. Probate court to appoint public administrator.
2. To give bond before entering on duties.
3. Certificate, oath and bond to be filed.
4. Person injured to sue on said bond.
5. When public administrator may be removed.
6. Compensation allowed.
7. When indicted and fined.
8. Duties of public administrator.
9. To make an inventory of all estates taken into possession, &c.
10. When to account and pay over to any other administrator, &c.
11. Duty of civil officers to inform public administrator of property, &c.
12. To institute all necessary suits and prosecutions.
§ 13. Justice of peace to issue warrant for person holding property, &c.
14. The cause to be tried in summary manner by said justice.
15. Judgment to be enforced by execution or attachment.
16. When affiant to pay costs, and no bar for administrator to sue.
17. When appeal to be taken, &c.
18. Form of recognizance to be entered into, &c.
19. Same proceedings as in appeals from judgments, &c.
20. When justice may issue warrant to seize property.
21. Probate court may, at any time, order settlement with public administrator.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Probate court to appoint public administrator.

Section 1. The probate court may appoint a public administrator for each county in this territory, who shall be a resident citizen of the county, and shall hold his office for three years, and until his successor shall be qualified.

To give bond before entering on duties.

SEC. 2. Before entering upon the duties of his office, he shall take the oath prescribed by law, and enter into bond to the territory in such sum as the probate court shall deem sufficient, with two or more sufficient securities, approved by such court, and conditioned that he will faithfully discharge all the duties of his office; and such court may, from time to time, as occasion may require, demand additional security of such public administrator, and in default of procuring the same within twenty days after such demand, may remove the administrator and appoint another.

Certificate, oath and bond to be filed.

SEC. 3. His certificate of appointment, official oath, and bond, shall be filed and recorded in the office of the clerk of the probate court, and copies thereof, certified under the seal of the probate court, shall be evidence.

Person injured to sue on said bond.

SEC. 4. Any person injured by the breach of such law, may sue upon the same, in the name of the territory, for his own use.

When public administrator may be removed.

SEC. 5. Such public administrator may be removed from office in the same manner, and for the same causes, as justices of the peace.

What compensation allowed.

SEC. 6. He shall receive the same compensation for his services as may be allowed by law to executors and administrators, unless the court, for special reasons, allow a higher compensation.

When indicted and fined.

SEC. 7. For any wilful misdemeanor in office, he may be indicted and fined not exceeding two hundred dollars.

Duties of public administrator.

SEC. 8. It shall be the duty of the public administrator to take into his charge and custody the estates of all deceased persons in his county, in the following cases: First, when a stranger dies intestate in the county, without relations or confidential friends, or dies leaving a will, and the executor named is absent, or fails to qualify; second, when persons die intestate, without any known heirs, and administration is not undertaken by some other responsible person; third, when persons unknown die, or are found dead in the county; fourth, when money, property, papers, or other estate, are left in a situation exposed to loss or damage, and no other person administers on the same; fifth, when any estate of any person, who has died elsewhere, is left in the county liable to be wasted, injured or lost, or is not in the lawful custody of some responsible person; sixth, when, from any other good cause, the probate court shall order him to take possession of any estate, to prevent its being injured, wasted, purloined or lost.

To make an inventory of all estates.

SEC. 9. He shall make a perfect inventory of all such estates taken into his possession, and administer and account for the same as nearly as circumstances will permit, according to the law prescribing the duties of administrators, subject to the control of the probate court.

When to account and pay over to other administrators.

SEC. 10. If, at any time, letters testamentary or of administration be regularly granted on such estate to any other person, he shall, under the order of the probate court, account for, pay and deliver to the executor or administrator thus appointed, all the money, property, papers and estate of every kind in his possession.

Duty of civil officers.

SEC. 11. It shall be the duty of all civil officers to inform the public administrators of all property and estate known to them, which is liable to loss, waste or injury, and which, by law, ought to be in the possession of the public administrator.

To institute all suits.

SEC. 12. The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers, or other estate, of the person deceased.

Justice of peace to issue warrant.

SEC. 13. If any person file an affidavit before a justice of the peace, that he has reason to believe that any other person is unlawfully possessed of property, (describing the same in such affidavit as truly as may be,) which ought to be committed to the care of the public administrator, he shall issue his warrant to bring such person before him forthwith.

Cause to be tried in a summary manner.

SEC. 14. When such person shall be brought before the justice, the matter shall be tried in a summary way, and if the complaint be found true, the justice shall render judgment that the property be delivered to the public administrator to be administered, and for costs.

Judgment to be enforced.

SEC. 15. Such judgment may be enforced by execution or attachment.

When affiant to pay costs.

Judgment no bar for suit.

SEC. 16. If such judgment be against the right of the public administrator to such property, the affiant shall pay the costs, but the judgment shall be no bar to the administrator's right to sue in the ordinary form, in the proper court, for the recovery thereof.

When appeal may be taken.

SEC. 17. If the judgment of the justice be against the person charged with the possession of such property, he shall be allowed an appeal to the court having jurisdiction of appeals from justices' courts, on the same terms, and with like effect, as in appeals from judgments in justices' courts.

Recognizance to be entered into by appellant.

SEC. 18. The recognizance to be entered into by the appellant and his securities, may be in the following form: "We, the undersigned ——— and ———, acknowledge ourselves indebted to ———, public administrator for ———, in the sum of ——— dollars, to be void upon this condition: whereas, ——— has appealed from the judgment of ———, a justice of the peace, in a proceeding between ———, affiant, and ———, defendant;

now, if on such appeal the judgment of the justice be affirmed, or on a trial anew in the circuit court, judgment be given against the appellant, and he shall satisfy and perform such judgment, or if his appeal shall be dismissed, he shall satisfy and perform the judgment of the justice, and pay the costs of the appeal, the recognizance shall be void. Given under our hands and seals. A. B., [seal.] C. D., [seal.] Test, J. P.

Same proceedings as in appeals, &c.

SEC. 19. When appeal is allowed, the same proceedings shall be had, and the duties of the justice shall be the same as in appeals from judgments in justices' courts.

When justice may issue warrant to seize property.

SEC. 20. If the person against whom the judgment is rendered be found, or the judgment cannot be complied with, the justice may issue his warrant to seize the property, or other estate, and deliver it to the public administrator.

Probate court may order public administrator to settlement, &c.

SEC. 21. The probate court may, at any time, order the public administrator to account for and deliver all money and property of any estate in his hands to the heirs, or to an executor or administrator duly appointed.

This act to take effect and be in force from and after its passage.

CHAPTER 3.

ACTIONS.

An act to regulate the limitations of actions.

§ 1. When action can be maintained.
2. When entry upon real estate as a claim is valid.
3. Time when action shall be commenced.
4. What actions to be commenced within three years.
5. Actions against sheriff, &c., to be within two years.

§ 6. Actions for libel, slander, &c., to be within two years.
7. When cause of action deemed to have accrued.
8. When statute of limitation to take effect.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When action can be maintained.

SECTION 1. No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question, within ten years before the commencement of such action.

When entry upon real estate, as a claim, valid.

SEC. 2. No entry upon real estate shall be deemed sufficient, or valid as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within ten years from the time when the right to make such entry descended or accrued.

Time when action shall be commenced.

SEC. 3. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or an action upon a sealed instrument, shall be commenced within twenty years.

What actions to be commenced within three years, &c.

SEC. 4. The following action shall be commenced within three years. First, an action upon a contract, obligation, or liability, expressed or implied, excepting those mentioned in the previous section. Second, An action upon a liability created by statute, other than a penalty or forfeiture. Third, An action for trespass upon real property. Fourth, An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property. Fifth, An action for criminal conversation or for any injury to the person or right of another, not arising on contract, and not hereinafter enumerated.

Action against sheriff, &c, to be within two years.

SEC. 5. An action against a sheriff, coroner, or constable, a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution, shall be commenced within two years after his term of office shall expire.

Action for libel, &c., to be within two years.

SEC. 6. An action for libel, slander, assault, battery, or false imprisonment, on an action upon a statute, for a forfeiture or penalty to the people of this territory, shall be commenced within two years.

When cause of action deemed to have accrued.

SEC. 7. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account, on either side.

When statute of limitation to take effect.

SEC. 8. The statute of limitation shall in no case be deemed to run against any infant, married woman, person of unsound mind, or person absent from the United States, until the time of such limitation shall have transpired, after such disability is removed.

This act to take effect from and after its passage.

CHAPTER 4.

AGRICULTURE.

An Act to encourage agriculture in the territory of Kansas.

§ 1. When farmers are allowed to sell articles free of license.
2. Not to extend to merchants or grocers.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When farmers are allowed to sell articles free of license.

SECTION 1. That any farmer or farmers, residing in this territory, who shall grow on his or their farms any article of produce, and shall ship or otherwise convey the same to market, on his or their own account, either separately or jointly, and shall sell or trade the same, either in whole or in part, for iron, salt, sugar, coffee, teas, spun cotton, nails, or leather, are hereby authorized and permitted to vend and retail the said articles, at their respective places of residence, free from taxation or license, in any quantity or quantities which they may think proper.

This act not to extend to merchants or grocers.

SEC. 2. This act shall not be so construed as to extend to any merchant or grocer.

This act to take effect and be in force from and after its passage.

CHAPTER 5.

ALIENS.

An Act respecting aliens.

§ 1. Aliens empowered to hold and alienate real estate.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Aliens empowered to hold real estate and to alienate the same.

SECTION 1. All aliens residing in the United States, who shall have made a declaration to become citizens of the United States, by taking the oath prescribed by law, and all aliens residing in this territory, shall be capable of acquiring real estate in this territory by descent or purchase, and of holding and alienating the same, and shall incur the like duties and liabilities in relation thereto, as if they were citizens of the United States.

This act to take effect and be in force from and after its passage.

CHAPTER 6.

APPRENTICES.

An Act concerning apprentices.

§ 1. Minors may bind themselves by indenture, with consent of parents.
2. With consent of probate court.
3. Master to make affidavit.
4. Father incapable, mother may consent.
5. Incapacity, how established.
6. Poor children may be bound by probate court.
7. By guardian.
8. Covenants in indenture.
9. To be fulfilled, and grievances redressed.
10. Negro or mulatto, not to be educated.
11. Age of apprentice to be inserted in indenture.
12. Indenture void as to apprentice, when.
13. Complaint by apprentices.
§ 14. Court may dissolve contract.
15. Complaint by master.
16. Misconduct of apprentice, warrant to issue.
17. Proceedings on return of warrant.
18. Enticing apprentices to run away, penalty.
19. Harboring, penalty.
20. Executor may bind infant, when.
21. Removing apprentice, prevented.
22. Further proceedings.
23. Master wishing to remove, may deliver up apprentice.
24. Indenture survives to, and against survivor, in certain cases.
25. Desertion, cause of action against apprentice.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Minors may bind themselves by indenture with consent of parents.

SECTION 1. Every person bound by indenture, of his free will, with the consent of his father, or, if he be dead, of the mother or guardian, and signified by such parent or guardian signing the same, or by the probate court, as hereinafter directed, to serve as clerk or apprentice, in any profession, trade or employment, until the age of twenty-one years, or for a shorter time, although such apprentice shall be under the age of twenty-one years at the making of such indenture, he shall be bound to serve the time specified in such indenture.

With consent of probate court.

SEC. 2. Any infant, having no parent or guardian, may, with the approbation of the probate court, endorsed on the indenture, bind himself an apprentice until he arrives at the age of twenty-one years, or, if a female, at the age of sixteen years.

Master to make affidavit.

SEC. 3. Upon the execution of every indenture of apprenticeship, the person to whom the apprentice is bound shall make an affidavit that he will faithfully perform the duties required by the indenture, and enjoined on him by law, which affidavit shall be endorsed on the indenture.

Father incapable, mother may consent.

SEC. 4. When the father has no legal capacity to give consent, or when he shall have wilfully abandoned his family for six months, without making suitable provision for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father was dead.

SEC. 5. Facts of incapacity, desertion, or drunkenness, shall be decided in the probate court, by a jury, before the indenture shall take effect, and an endorsement on the indenture, under the seal of the court, that the same are proved, shall be sufficient evidence of the mother's power to give such consent; but if the jury do not find the charge of incapacity, drunkenness, or desertion, to be true, the person, at whose instance such proceedings may have been had, shall pay all costs attending the same.

Incapacity, how established.

SEC. 6. When any poor child is, or may be, chargeable to the county, or shall beg for alms, or whose parents are, or may be, chargeable to the county, or shall beg for alms, or when the parents of such children are poor and the father an habitual drunkard, or, if there be no father, when the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, it shall be lawful for the probate court to bind such child an apprentice until, if a male, he arrives to the age of twenty-one years, and if a female, to the age of sixteen years.

Poor children ma be bound by probate court.

SEC. 7. Every orphan or minor who has not estate sufficient for his maintenance, may be bound by his guardian under the order and direction of the probate court, and the indenture of binding such infant shall be as effectual as if such infant were of full age, and the counterpart of such indenture shall, for the benefit of the infant so bound, be deposited with the clerk of the probate court in which such binding shall take place, for safe keeping.

By guardians.

SEC. 8. It shall not be lawful for any master to remove an apprentice out of this territory, and in all indentures by the probate court, for binding out any orphan or poor child as an apprentice, there shall be inserted, among other covenants, a clause to the following effect: That every master to whom such child shall be bound, shall cause such child to be taught to read and write, and the ground rules of arithmetic, the compound rules and the rule of three, and, at the expiration of his time of service, shall give him a new bible and two new suits of clothes, if a male, to be worth forty dollars, and if a female, to be worth twenty dollars, and ten dollars in current money of the United States.

Covenants in indenture.

SEC. 9. The probate court shall see that the terms of the indenture, and the covenants therein contained, be fulfilled, and that such child be not ill used; and the said court is hereby required to enquire into, and redress any grievances that may occur in the premises, in such manner as is prescribed by law.

To be fulfilled and grievances redressed.

SEC. 10. When an apprentice is a negro or mulatto, it shall not be the duty of the master to cause such colored apprentice to

Negro and mulatto, not to be educated.

be taught to read or write, or a knowledge of arithmetic; but he shall be allowed, at the expiration of his term of service, a sum of money in lieu of education, to be assessed by the probate court.

Age of apprentice to be inserted, &c.

SEC. 11. The age of every apprentice shall be inserted in the indenture.

Indenture void, as to apprentices, when.

SEC. 12. All indentures entered into otherwise than according to law, shall be utterly void, so far as concerns the apprentice therein bound.

Complaints o apprentices.

SEC. 13. The probate court shall receive the complaints of apprentices, who reside within the county, against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, want of instruction in their trade or profession, or that they are in danger of being removed out of this territory, or the violation of the indentures of apprenticeship, and may hear and determine such cases by a jury, and make such order therein, as will relieve the party injured, in future.

Court may dissolve contract.

SEC. 14. The probate court shall have power, when circumstances require it, to discharge an apprentice from his apprenticeship, and in case any money or other thing has been paid, or contracted to be paid, by either party, in relation to such apprenticeship, the court shall make such order concerning the same, as shall seem just and reasonable; if the apprentice so discharged shall have been originally bound by the probate court, it shall be the duty of the court, if they judge necessary, again to bind such apprentice.

Complaint of master,

SEC. 15. The court shall, in like manner, hear and determine the complaints of masters against their apprentices for desertion without good cause, miscarriage or ill behavior, and may punish such apprentice according to the nature and aggravation of his offence; and if the offence be wilful desertion, without cause, the court may, in addition to other punishments, order the apprentice guilty thereof to make restitution by the payment of a sum, not exceeding ten dollars, for each month he may be so absent, to be collected as other debts, after such apprentice shall have become of full age. The awarding of costs in the proceedings under this section shall be in the discretion of the court.

Misconduct of apprentice, warrant to issue.

SEC. 16. If any apprentice shall abscond or depart from the service of his master without leave, or shall rebel against or assault his master, any judge or justice of the peace, on complaint made, and sufficient cause shown on oath by the master, or any one on his behalf, shall issue a warrant directed to any sheriff or constable within this territory, or any discreet and responsible person, to be named in the warrant, to execute the same in any part of this territory.

Proceedings on the return of warrant.

SEC. 17. If, upon the return of any such warrant, the probate court shall not be in session, it shall be the duty of the person serving the same to carry the apprentice before some judge or justice of the peace of the said county, who shall take bail for the appearance of the apprentice at the next term of the court, to answer to the complaint of the master, or for want of bail, to commit him to prison until the sitting of the next court, unless the master shall consent to his discharge. The costs of the process, service and commitment shall be paid, in the first instance, by the master; but the court, upon the final hearing, may order such apprentice to make retribution of such costs, by services after the expiration of the time for which he shall have been bound.

Enticing apprentices to run away, penalty.

SEC. 18. Every person who shall counsel, persuade, entice, or assist any apprentice to run away or absent himself from the service of his master, or to rebel against or assault his master, shall forfeit not less than twenty, nor more than five hundred dollars, to be sued for and recovered by action on the case, with costs, by such master, in any court having jurisdiction thereof.

Harboring.

Penalty.

SEC. 19. Every person who shall entertain, harbor or conceal any apprentice, knowing such apprentice to be runaway, or to have absented himself from the service of his master without leave, shall forfeit one dollar for every day's entertainment, harboring or concealing, to be sued for and recovered by action of debt, with costs, by such master, in any court having jurisdiction thereof.

Executor may bind infant, when.

SEC. 20. The executor, who, by the last will of a father, is directed to bring up his child to some trade or calling, shall have power to bind such child by indenture in like manner as the father, if living, might have done, or shall raise such child according to such direction.

Removing apprentice prevented.

SEC. 21. If it shall appear to any judge or justice of the peace, upon the oath of any competent person, that any master is about to remove, or cause to be removed, any apprentice out of this territory, such judge or justice shall issue his warrant, and cause such master to be brought before him; and if, upon examination, it shall appear that such apprentice is in danger of being removed without this territory, the judge or justice may require the master to enter into recognizance, with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice shall not be removed without this territory, and that said master will appear with the apprentice before the probate court at the next term thereof, and abide the decision of the court thereon; which recognizance shall be returned to the probate court, and the court shall proceed therein in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice.

Further proceedings.

SEC. 22. If the master, when brought before the judge or justice, fails to enter into recognizance when required so to do, such judge or justice shall commit the custody of such apprentice to some other proper person, who will enter into recognizance.

Master wishing to remove, may deliver up apprentice.

SEC. 23. Whenever any master of an apprentice shall wish to remove out of this territory, or to quit his trade or business, he shall appear with his apprentice before the probate court of the proper county; and if the court be satisfied the master has done justice to said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person.

Indenture survives to and against survivor in certain cases.

SEC. 24. When any person shall become bound as an apprentice to two or more persons, and one or more of them die before the expiration of such term of service, the indenture shall survive to and against such survivor; and in case of the death of all the masters in any such indenture before the expiration of the term of service, the executor or administrator shall bring the indenture and apprentice therein named before the probate court of the proper county, and such court shall, if necessary, again bind such apprentice to some other person.

Desertion, cause of action against apprentice.

When to be brought.

SEC. 25. If any apprentice shall absent himself from the service of his master without leave, or shall run away, so that the master shall be deprived of his service during the remainder of the time, or any part thereof for which he was bound to serve, the master of such apprentice may have an action on the case, in any court of competent jurisdiction, against such apprentice after he arrives at full age, for the damages that such master may have sustained by reason of the absence of such apprentice; such action shall be brought within two years after such apprentice arrives at full age.

This act to take effect and be in force from and after its passage.

CHAPTER 7.

ARBITRATIONS AND AWARDS.

An Act concerning arbitrations and awards.

§ 1. Who may submit. What matters may be submitted.
2. Arbitrators to appoint a time and place for hearing; to notify parties; may adjourn, &c.
3. Oath of arbitrators.
4. Attendance of witnesses, how compelled. Power of arbitrators during the hearing of the cause.
5. All the arbitrators to meet, when majority may award.
6. Award, how to be authenticated.
7. How award to be confirmed; proceedings of the court thereon.
8. Before confirmation of award, notice to be served on the adverse party.
9. Grounds on which parties may move to vacate award.
10. When motion may be made to modify, or correct award.
11. Motions to vacate and modify awards, when made, &c.
12. Court may vacate award and direct a new hearing.
13. Judgment, when and how to be rendered.
14. Obedience to award may be enforced by attachment.
15. Costs, when and how taxed and collected.
16. Arbitrators to make an order concerning costs in their award.
17. Effect and extent of the judgment.
18. Record of judgment to be made. Its form.
§ 19. Writ of error, or appeal on judgment, proceedings thereon.
20. Costs, how adjudged if award vacated. Payment, how enforced.
21. Proceedings of court on reversing order.
22. Proceedings in case of a reversal of the order.
23. Authority of court of equity not to be impaired by this act, in certain cases.
24. Proceedings when party revokes submission before publication of the award. Power to revoke limited.
25. Proceedings in action, on the bond in case of revocation.
26. No other than damages specified to be recovered.
27. Referees appointed by order of reference, to proceed, &c.
28. To appoint a time and place of hearing; may adjourn, &c.
29. Oath of referees.
30. Authority of referees.
31. All must meet, and hear, &c. A majority may report.
32. Power of the court over referees.
33. If the report of the referees be confirmed, judgment thereon.
34. Compensation of arbitrators and referees.
35. Witnesses, &c., allowed fees before arbitrators or referees.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who may submit; what matters may be submitted.

SECTION 1. All persons except infants, married women, and persons of unsound mind, may, by an instrument of writing, submit to the decision of one or more arbitrators, any controversy which may be existing between them, which might be the subject of an action at law, or a suit in equity, and may, in such submission, agree that a judgment of any court of record, to be designated in such submission, shall be rendered upon the award made pursuant to such submission. (*a*)

(*a*) *Vide*, Scudder vs. Johnson; 5 Missouri Rep., 551. Mistakes of arbitrators, as to their mode of appointment, will not vitiate the award. Magoon et al. vs. Whiting, 1 Missouri Rep., 438.

Arbitrators to appoint a time and place for hearing.

Sec. 2. The arbitrators thus selected shall appoint a time and place for the hearing, and notify the parties thereof, and shall adjourn the hearing from time to time as may be necessary; and on the application of either party, and for good cause, may postpone the hearing to a time not extending beyond the day fixed in the submission for rendering the award.

Oath of arbitrators.

Sec. 3. Before proceeding to hear any testimony, the arbitrators shall be sworn faithfully and fairly to hear and examine the matters in controversy, and to make a just award according to the best of their understanding.

Attendance of witnesses, &c.,

Power of arbitrators during the hearing of the cause.

Sec. 4. The arbitrators shall have the same power to issue subpœnas for witnesses, and to compel their attendance by attachment, to administer oaths, and punish contempts committed in their presence during the hearing of the cause, that may be given by law to justices of the peace. (*b*)

All arbitrators to meet, when majority may award.

Sec. 5. All the arbitrators must meet together and hear all the proofs and allegations of the parties, pertinent or material to the cause; but an award made, and every other act done by a majority of them, shall be valid, unless the concurrence of all the arbitrators, or of a certain number of them, to such award, or act, be expressly required in the submission.

Award how to be authenticated.

Sec. 6. To entitle an award to be enforced, according to the provisions of this act, it must be in writing, subscribed by the arbitrators making the same, and attested by a subscribing witness.

How award to be confirmed.

Proceedings of the court thereon.

Sec. 7. Upon such submission, and the award made in pursuance thereof, being proved, the court designated in the submission shall, upon motion, by an order in open court, confirm the award, unless the same be vacated or modified, or a decision thereon be postponed, [illegible] herein provided.

Before confirmation of award, notice to be served on the adverse party.

Sec. 8. No award shall be so confirmed, unless a copy thereof, together with a notice in writing of such motion, shall have been served on the adverse party, at least fifteen days before the making of the same, if such party be found, or, if not, left at his usual place of abode, with some free white member of the family above the age of fifteen years; and no such motion shall be entertained after the expiration of one year from the publication of the award.

Grounds on which parties may move to vacate award.

Sec. 9. Any party complaining of such award, may move the court designated in the submission, to vacate the same upon either of the following grounds: *First*. That such award was procured

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(*b*) An oath administered by a justice of the peace, before arbitrators, on a parol submission not made a rule of court, is not a judicial oath, nor will its falsity constitute a legal perjury. Mahon vs. Berry; 5 Missouri Rep. 21.

by corruption, fraud or other undue means. *Second.* That there was evident partiality or corruption in the arbitrators, or either of them. *Third.* That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear any evidence pertinent or material to the controversy, or any other misbehavior by which the rights of any party shall have been prejudiced. *Fourth.* That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final and definite award on the subject matter submitted was not made.

When motion may be made to modify or correct award.

SEC. 10. Any party to such submission may also move the court designated therein to modify or correct such award in the following cases: *First.* Where there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in such award. *Second.* Where the arbitrators shall have awarded upon some matter not submitted to them, nor affecting the merits of the decision of the matter submitted. *Third.* Where the award shall be imperfect in some matter of form not affecting the merits of the controversy, and when, if it had been a verdict, such defect should have been amended or disregarded by the court.

Motions to vacate and modify award, when made, &c.

SEC. 11. Every such application to vacate or modify an award, shall be made to the said court of record, designated in the submission, at the next term after the publication of the award, upon at least ten days' previous notice, in writing, to the adverse party, if there be time for that purpose; and if there be not time, such court, or the judge thereof, may, upon good cause shown, order a stay of proceedings upon the award, either absolutely, or upon such terms as shall appear just, until the next succeeding term of the court.

Court may vacate award and direct a new hearing.

SEC. 12. On such application, the court may vacate the award in any of the cases hereinbefore specified, and, if the time within which the award shall have been required to be made, by the submission, has not expired, may, in its discretion, direct a re-hearing by the arbitrators; and, in the cases hereinbefore specified, the court may modify and correct the award, so as to affect the intent thereof, and to promote justice between the parties.

Judgment, when and how to be rendered.

SEC. 13. Upon such award being confirmed or modified, the court shall render judgment in favor of any person to whom any sum of money shall have been awarded, that he recover the same; and if the award shall have ordered any act to be done by either party, judgment shall be rendered that such act be done according to such order.

Obedience to award may be en-

SEC. 14. When the award shall be for the performance of any forced by attachment. act other than the payment of money, the same being confirmed or modified by the court, obedience thereto may be enforced in said court, by attachment, in the same manner as obedience may be enforced to any other rule of court.

Costs, when and how taxed and collected. SEC. 15. The costs of the proceedings, after an application to the said court for its action upon the award, and the fees allowed by law to the arbitrators, (where no provision for the payment of such fees is made in the award,) shall be taxed and collected as in suits at law; but no costs shall be taxed for any other services or expenses prior to such application.

Arbitrators to make an order concerning costs in their award. SEC. 16. The arbitrators may ascertain the costs incurred in the proceedings before them, and make such order in their award, touching the payment thereof, as to them shall seem just.

Effect and extent of the judgment. SEC. 17. Such judgment shall have the same force and effect, in all respects, as the judgment of the same court in actions, and shall be subject to all the provisions of law applicable to the judgment of such court in actions.

Record of judgment to be made. Its form. SEC. 18. The record of such judgment, when drawn up in form, shall recite the submission; state the hearing before the arbitrators; their award; the proceedings of the court therein in modifying or confirming such award, and the judgment of the court for the recovery of the money awarded; and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

Writ of error, or appeal on judgment, proceedings thereon. SEC. 19. When any writ of error, or appeal, shall be taken to such judgment, copies of the original affidavits upon which any application in relation to such award was founded, and of all other affidavits and papers relating to such application, shall be annexed to, form a part of, and be returned with, the record of the judgment; and the court to which such writ of error, or appeal, shall be taken, shall reverse, modify, amend or affirm such judgment, or any part thereof, according to justice.

Costs, how adjudged, &c. SEC. 20. If, upon any application made pursuant to the provisions of this act, the court shall vacate any award of arbitrators, costs shall be awarded to the prevailing party, and shall be collected as in other cases of judgment for costs.

Proceedings of court in reversing order. SEC. 21. Upon every such order vacating an award, the party aggrieved, may take a writ of error, or an appeal, as upon any other judgment of such court, and thereupon copies of such order, and of all affidavits and papers used in such application, shall be certified to the appellate court, and such court shall affirm or reverse such order, as shall be just.

Proceedings in case of a reversal of the order. SEC. 22. If such order be reversed, the proceedings shall be remitted to the court from which they were removed, to proceed thereon; or the court to which such proceedings may have been removed may proceed thereon, after due notice to the party complaining of such award, to modify or confirm the same, in the same manner, and with the like effect, as if the application for that purpose had been originally made to such court.

Authority of court of equity not to be impaired by this act, in certain cases.

Sec. 23. Nothing contained in this act shall impair, diminish or in any way affect the authority of a court of equity over the awards of arbitrators, or the parties thereto, nor to impair or affect any action upon any award, or upon any bond or other engagement to abide by any award.

Proceedings when party revokes submission, before publication of the award.

Power to revoke limited.

Sec. 24. Whenever any submission to arbitration shall be revoked by a party thereto before the publication of the award, the party so revoking shall be liable to an action by the adverse party, to recover all the costs, expenses and damages in preparing for such arbitration; but neither party shall have power to revoke the powers of the arbitrators, after the cause shall have been submitted to them, upon a hearing of the parties for their decision.

Proceedings in action on bond in case of revocation.

Sec. 25. If the submission so revoked was contained in the condition of any bond, the obligee in such bond shall be entitled to prosecute the same in the same manner as other bonds with conditions other than for the payment of money, and to assign such revocation as a breach thereof; and for such breach he shall recover, as damages, the costs and expenses incurred, and the damages sustained by him in preparing for such arbitration.

No other than damages specified shall be recovered.

Sec. 26. No other sum, penalty, forfeiture or damages shall be recovered for any revocation of a submission to arbitration than such as are prescribed in the two last sections, notwithstanding any stipulated damage, penalty or forfeiture contained in such submission, or in any other instrument in agreement collateral thereto.

Referees appointed by order of reference to proceed, &c.

Sec. 27. The referees, appointed in pursuance of any order of reference, shall proceed with diligence to hear and determine the matter in controversy.

To appoint a time and place for hearing, may adjourn, &c.

Sec. 28. They shall appoint a time and place for the hearing, and notify the parties thereof, and shall adjourn the hearing from time to time as may be necessary; and for good cause, they may postpone the hearing to any time not extending beyond the next term of the court in which the suit is pending, or when a longer time is given by the order of the court within which to report, not extending beyond such time.

Oath of referees.

Sec. 29. Before proceeding to hear any testimony in the cause, they shall be sworn faithfully and fairly to hear and examine the cause, and to make a just, impartial and true report according to the best of their understanding.

Authority of referees.

SEC. 30. The referees shall have the same authority that is conferred by the fourth section of this act upon arbitrators.

All must meet and hear, &c.

A majority may report.

SEC. 31. All the referees must meet together and hear all the proofs and allegations of the parties, but a report made, and every other act done by a majority of them, shall be valid.

Power of the court over referees.

SEC. 32. The referees may be compelled, by the order of the court in which the case is pending, to proceed to the hearing, and to make report, and the court may require them to report their decision in admitting or rejecting any witness, or the deposition of any witness, or other testimony; in allowing or overruling any question to any witness, or the answer thereto; and all proceedings by them, together with the testimony before them, and their reasons for allowing or disallowing any claim of either party.

If report of referees be confirmed, judgment thereon.

SEC. 33. If the report of the referees be confirmed by the court, judgment shall be rendered thereon in the same manner, and with like effect, as upon a verdict of a jury.

Compensation of arbitrators and referees.

SEC. 34. Arbitrators and referees shall each receive one dollar a day for their services.

Witness, &c., allowed fees before arbitrators or referees.

SEC. 35. Witnesses shall receive the same fees for attending before arbitrators and referees, that may be allowed them for attending before the said courts in civil cases; and sheriffs, and all other officers, shall be entitled to the same fees, for services performed in relation to arbitrations and references, that may be allowed them in their respective courts for similar services.

This act to take effect and be in force from and after its passage.

CHAPTER 8.

ATTACHMENT.

An Act to provide for the recovery of debts by attachment.

ARTICLE I. Of attachment in the courts.
II. Of attachment before justices of the peace.

ARTICLE I.

Of attachment in the courts.

§ 1. In what cases creditors may sue by attachment.
2. Proceedings to obtain attachment. Declaration, affidavit and bond to be filed.
3. Who shall make affidavit. Its form.
§ 4. Who shall execute the bond. Its conditions.
5. Duty of clerk in taking bond. Bond, declaration and affidavit, to be filed before the attachment issues.

§ 6. Court may order another bond and further security to be given in certain cases.
7. Failure to comply, suit to be dismissed.
8. Who may bring suit on bond. Judgment.
9. Form of original writs of attachment.
10. Several defendants, separate writs may issue.
11. Writs, how issued and returned. Proceedings. Judgment.
12. Writs, how to be served.
13. Who may be summoned as garnishees.
14. Defendant not summoned and property attached, publication to be made. Form of notice.
15. How and where notice shall be published.
16. If defendant fail to appear, judgment by default, &c.
17. Judgment and execution to be only against the property attached.
18. Property or effects of one defendant attached, &c., how plaintiff may proceed.
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37. Garnishee may discharge himself by delivering property of defendant, found in his hands, to sheriff.
38. Debts not yet due, defendant may be attached.
39. When and how persons may interplead; proceedings thereon.
40. In cases of interpleader, how costs may be adjudged.
41. Proceedings to obtain attachment in aid of ordinary process.
42. Other writs of attachment may be awarded, when.
43. Such writs to be entitled in the cause, and in aid thereof.
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45. How to be served and returned. Proceedings.
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50. Order of sale, proceedings of the clerk and officer thereon.
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52. Proceedings in order to disprove, or avoid debt or damages. Petition. Notice.
53. If petition deny the cause of action, plaintiff required to prove it, &c.
54. Further proceedings on petition.
55. Plaintiff served with petition and notice, required to answer; failure taken as a confession.
56. If petition alleges a set-off, &c., plaintiff to plead or answer; in default thereof, judgment to be rendered.
57. Issues on petitions, how tried.
58. Costs, judgment for on petitions.
59. Executions on judgments in attachment, how awarded.
60. Compensation to officer for keeping property attached.
61. Power of court to prescribe rules of proceeding in attachment causes.
62. What property of defendants, residing in this territory, is exempt from attachment.
63. In what cases demands for less than fifty dollars may be collected by attachment in the court.

§ 34. Courts, and justices of the peace, to have concurrent jurisdiction over demands exceeding five, and not exceeding fifty dollars.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

In what cases creditors may sue by attchment.

SECTION 1. Creditors, whose demands amount to fifty dollars, may sue their debtors in any court having jurisdiction of the subject matter, by attachment, in the following cases: (*a*) *First.* Where the debtor is not a resident of, nor resides within this Territory. (*b*) *Second.* Where the debtor conceals himself, so that the ordinary process of law cannot be served upon him. *Third.* Where the debtor has absconded or absented himself from his usual place of abode in this territory, so that the ordinary process of law cannot be served upon him. *Fourth.* Where the debtor is about to remove his property or effects out of this territory, with the intent to defraud, hinder or delay his creditors. *Fifth.* Where the debtor has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors. *Sixth.* Where the debtor has fraudulently concealed or disposed of his property or effects, so as to hinder or delay his creditors. *Seventh.* Where the debtor is about, fraudulently, to convey or assign his property or effects, so as to hinder or delay his creditors. *Eighth.* Where the debtor is about, fraudulently, to conceal or dispose of his property or effects, so as to hinder or delay his creditors. *Ninth.* Where the debt was contracted out of this territory, and the debtor has absconded or secretly removed his property or effects into this territory, with the intent to defraud, hinder or delay his creditors. An affidavit, alleging any one of the nine causes, as set forth in the several sub-divisions of this section, in the language of such sub-divisions, shall be held and adjudged good and sufficient.

Proceedings to obtain attachment. Declaration, affidavit and bond to be filed.

SEC. 2. A creditor, wishing to sue his debtor, by attachment, may file in the clerk's office of the court having jurisdiction of the subject matter of any county in this territory, a declaration or other lawful statement of his cause of action, (*c*) and also shall file an affidavit and bond; and thereupon, such creditor may sue out an original attachment against the lands, tenements, goods, moneys, effects and credits of the debtor, in whosesoever hands they may be.

(*a*) A non-resident may have an attachment in this State, against a non-resident. Posey *vs.* Buckner, 3 Missouri Rep., 605. Grahams *vs.* Bradbury, *et al.*, 7 *Ib.* 281.

(*b*) An affidavit, that the defendant is not a resident of this State, so that the process of the court cannot be served upon him, is insufficient. Lane vs. Fellows, 1 Missouri Rep. 355.

(*c*) A petition, in debt, is a lawful statement of the cause of action. Chenault vs. Chapron & Niedelet, 5 Missouri Rep, 438.

Who shall make affidavit

Its form.

SEC. 3. The affidavit shall be made by the plaintiff, or some person for him, and shall state that the defendant is justly indebted to the plaintiff, after allowing all just credits and offsets, in a sum, (to be specified) and on what account; and shall also state that the affiant has good reason to believe, and does believe, the existence of one or more of the causes which, according to the provisions of the first section, would entitle the plaintiff to sue by attachment. (*d*)

Who shall execute the bond.

Its conditions.

SEC. 4. The bond shall be executed by the plaintiff, or some responsible person, as principal, and one or more securities, resident householders of the county in which the action is to be brought, in a sum at least double the amount of the demand sworn to, payable to the territory of Kansas; conditioned that the plaintiff shall prosecute his action without delay and with effect, refund all sums of money that may be adjudged to be refunded, and pay all damages that may accrue to any defendant or garnishee, by reason of the attachment, or any process or proceeding in the suit.

Duty of clerk in taking bond.

Bond, &c., to be filed before attachment issues.

SEC. 5. The clerk shall judge of the sufficiency of the penalty and the security in the bond; if they be approved, he shall endorse his approval thereon, and the same, together with the affidavit and declaration, or other lawful statement of the cause of action, shall be filed before an attachment shall be issued. (*e*)

Court may order another bond and further security to be given in certain cases.

SEC. 6. If, at any time pending a suit by attachment, it shall appear to the court before which the action is pending, that the bond given by the plaintiff is insufficient, or that any security therein has died or has removed from the territory, or has become or is likely to become insolvent, the court may order another bond and such further security to be given as shall seem necessary, five days' previous notice, in writing, having been given to the plaintiff, his agent or attorney, of the application for such order.

Failure to comply, suit to be dismissed.

SEC. 7. If the plaintiff shall fail to comply with the order, within ten days after the same shall be made, the suit shall be dismissed at his costs.

(*d*) An affidavit before a judicial officer of any State, authorized by the common law and practice of the courts to administer oaths, is good in this State, for the purpose of granting an attachment. Hays vs. Bouthalier, 1 Missouri Rep., 346. Posey vs. Buckner, 3 Missouri Rep., 605. A judgment rendered in a suit by attachment, on an affidavit not warranted by the statute, will be set aside, even after a lapse of several years. Alexander vs. Hayden, 2 Missouri Rep., 229. See Lane vs. Fellows, 1 Missouri Rep., 355. The affidavit must state that the affiant "has good reason to believe, and does believe," the existence of the facts alleged. (Stevenson) and Hord vs. Robbins, 5 Missouri Rep., 19. See Curtis vs. Settle, 7 Missouri Rep., 452.

(*e*) When an attachment has been sued out in vacation without filing a bond, as the law requires, the plaintiff will not be allowed, either in vacation, or at the ensuing term of the court, to file a bond, *nunc pro tunc*. Stevenson & Hord vs. Robbins, 5 Missouri Rep., 19.

Who may bring suit on bond.

Judgment.

SEC. 8. The bond to be given by the plaintiff, or other person, in a suit by attachment, may be sued on, at the instance of any party injured, in the name of the territory of Kansas, to the use of such party, for the breach of the condition of such bond, and the damages shall be assessed thereon as on bonds with collateral conditions.

Form of original writs of attachment.

SEC. 9. Original writs of attachment shall be in form, with the addition of a clause of the nature and effect of an ordinary summons, to answer the action of the plaintiff. (*f*)

Several defendants separate writs may issue.

SEC. 10. When there are several defendants who reside or have property in different counties, and when a single defendant in any such action has property or effects in different counties, separate writs may issue to every such county, and every such writ shall be endorsed upon, or annexed to, a copy of the declaration.

Writs, how issued and returned.

SEC. 11. Original writs of attachment shall be issued and returned in like time and manner as ordinary writs of summons, and when the defendant is summoned to answer the action, the like proceedings shall be had between him and the plaintiff as in ordinary actions on contract, and a general judgment may be rendered for or against the defendant. (*ff*)

Proceedings.

Judgment.

Writs, how to be served.

SEC. 12. The manner of serving writs of attachment shall be as follows: *First*: The writ and declaration shall be served upon the defendant as an ordinary summons. *Second*. Garnisheessh all be summoned by the sheriff, declaring to them that he does summon them to appear at the return term of the writ, to answer the interrogatories which may be exhibited by the plaintiff, and by reading the writ to them, if required. *Third*. When lands or tenements are to be attached, the officer shall briefly describe the same in his return, stating the quantity and situation, and declare that he has attached all the right, title and interest of the defendant in the same, or so much thereof as shall be sufficient to satisfy the debt, interest and costs; and shall, moreover, give notice to the actual tenants, if any, at least ten

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(*f*) In Bland vs. Schott, 5 Missouri Rep., 213, the writ commanded the sheriff to attach the defendant by his lands, &c., that he be and appear at the circuit court, &c., without any clause of summons. Nor did the sheriff say any thing in his return, of his having summoned the defendant. On the hearing, the attachment, for certain reasons, was dissolved. The court held, that there having been no clause of summons, the court did not err in dismissing the suit.

(*ff*) A motion to dissolve an attachment is such an appearance as will authorise a general judgment, although the party has not been served with process. Whiting & Williams vs. Budd, 5 Missouri Rep., 443. Evans vs. King, 7 Missouri Rep., 411. After such constructive appearance, defendants should be allowed six days to file their pleas in, or until the end of the term, and it is error for the court to give judgment by default, against them, on the same day of their motion, unless the court should be about to adjourn on the same day. Whiting & Williams vs. Budd, supra.

days before the return day of the writ, and state the fact of such notice, and the names of the tenants in his returns. (*g*) *Fourth.* When goods and chattels, money, or evidences of debt, are to be attached, the officer shall take the same and keep them in his custody, if accessible; and if not accessible, he shall declare to the person in possession thereof, that he attaches the same in his hands, and summon such person as garnishee. (*h*) *Fifth.* When the credits of the defendant are to be attached, the officer shall declare to the debtor of the defendant, that he attaches in his hands all debts due from him to the defendant, or so much thereof as shall be sufficient to satisfy the debt, interest and costs, and summon such debtor as garnishee. (*i*)

Who may be summoned as garnishees.

Sec. 13. All persons shall be summoned as garnishees who are named as such in the writ, and such others as the officer shall find in the possession of goods, money or effects of the defendant not actually seized by the officer, and debtors of the defendant, and also such as the plaintiff or his attorney shall direct.

Defendant not summoned and property attached, publication to be made.

Form of notice.

Sec. 14. When the defendant cannot be summoned, and his property or effects shall be attached, if he does not appear and answer the action at the return term of the writ, and within the first six days thereof, if the term shall so long continue, and if not, then before the end of the term, the court shall order a publication to be made, stating the nature and amount of the plaintiff's demand, and notifying the defendant that his property has been attached, and that unless he be and appear at the next term, and on or before the third day thereof, if the term shall so long continue, and if not, then before the end of the term, judgment

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(*g*) A description precise as to quantity, and as particular as to location and boundary as deeds generally are, is sufficient in a sheriff's return of property, upon which he has levied an attachment. Hays vs. Bouthalier, 1 Missouri Rep., 346.

(*h*) In the case of Anderson vs. Scott, 2 Missouri Rep., 15, the court held, that a levy of attachment on property generally, without saying whose property, was not good, and a garnishee summoned, without any further levy, was not bound to appear. And in Maulsby vs. Farr, 3 Missouri Rep., 438, it was held, that a return to an attachment, not stating on whose property in the hands of the garnishee the writ was levied, is too defective to warrant a judgment, by default, against the garnishee. These decisions were made in reference to the act of the sixth of February, one thousand eight hundred and twenty-five, (R. C., 144,) which did not contain the provisions embraced in the second sub-division of the twelfth section of this act. But that act *did* contain the substance of the fourth sub-division of the twelfth section of this act, and to which this note is appended, and it is submitted that, when the officer is proceeding under the fourth sub-division above mentioned, that his duty is precisely the same as under the act of one thousand eight hundred and twenty-five, and as if the second sub-division had no existence.

(*i*) The interest of a joint obligee may be attached for his individual debt, in the hands of the obligor, but no more than his share can be so attached. Miller & Irvine vs. Richardson, 1 Missouri Rep., 310. A promissory note made payable to order, is such property as can be attached. Scott & Rule vs. Hill, *et al.*, 3 Missouri Rep., 88. *Vide* Lee, *et al.*, vs. Tabor & Watson, 8 Missouri Rep., 322.

will be rendered against him, and his property sold to satisfy the same.

How and where notice shall be published.

Sec. 15. The notice required in the last section shall be published four weeks successively, in some newspaper printed in this territory, the last insertion to be not less than four weeks before the first day of the next term, the necessary expense of which shall be taxed as other costs.

If defendant fail to appear, judgment by default, &c.

Sec. 16. When the defendant shall be notified, as aforesaid, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded on to final judgment, in like manner as in ordinary actions.

Judgment and execution to be *in rem* only.

Sec. 17. Such judgment shall bind only the property and effects attached, and no execution shall issue against any other property of the defendant, nor against his body, nor shall such judgment be any evidence of debt against the defendant in any subsequent suit.

Property or effects of one defendant attached, &c., how plaintiff may proceed.

Sec. 18. When two or more shall be defendants in any attachment cause, and the property or effects of part of them shall be attached in the hands of garnishees, but not actually seized or secured by bond, the plaintiff may, at his option, proceed against those whose property has been attached, or continue the cause, and sue out new process against the other defendants.

Property of one defendant seized, &c., when cause shall not be delayed.

Sec. 19. But when the property or effects of one or more of the defendants has been actually seized or secured by bond, the cause shall not be delayed for the purpose of sueing out new process against the other defendants, unless, upon good cause shown, the court shall so order.

Property attached in the hands of a person other than defendant, may be retained by giving bond.

Sec. 20. When property of the defendant, found in his possession, or in the hands of any other person, shall be attached, the defendant, or such other person, may retain the possession thereof, by giving bond and security, to the satisfaction of the officer executing the writ, to the sheriff, his successor, or their assigns, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the court shall direct, and shall abide the judgment of the court. (*j*)

Return of the writ and proceedings, how made.

Sec. 21. The officer executing the writ of attachment shall return, with the writ, all bonds taken by him in virtue thereof, and a schedule of all property and effects attached, and the names of all the garnishees, and the times and places when and where respectively summoned.

(*j*) When property of the defendant, attached in the hands of a third person, is retained, by giving bond and security for the forthcoming of the property, the attachment continues to be a lien on the property. Evans vs. King, 7 Missouri Rep., 411. *Vide*, Grant & Finney vs. Brotherton's administrator, 7 Missouri Rep., 458.

Execution returned, no property found, proceedings. Assignment of bonds. Motion. Judgment. Damages.

Sec. 22. When a return of no property found shall be made upon an execution, issued upon a judgment in an attachment suit against the defendant, the court shall direct the sheriff to assign to the plaintiff, his executor or administrator, the bonds taken by him for the forthcoming of the property attached, and may, upon motion, render judgment in favor of the plaintiff, against the obligor in the bond, for the value of such property; or, if the property should be greater in value than the amount due upon such execution, then for the amount due, together with twenty per cent. damages upon such value or amount.

Notice of motion to be given before judgment.

Sec. 23. No judgment shall be rendered upon such motion, unless the plaintiff shall have given the obligors in the bond at least fifteen days' notice, in writing, of such motion.

Liability of the officer on failing to return good and sufficient bond.

Sec. 24. If the officer fail to return a good and sufficient bond, in any case where bond is required by this act, the court may, upon motion of the plaintiff, rule the officer to file a good and sufficient bond, to be judged of by the court, on or before the first day of the next term; and in default thereof, such officer shall be held and considered as security for the performance of all acts, and the payment of all money, to secure the performance and payment of which such bond ought to have been taken, and he and his securities shall be liable therefor, on his official bond; but no such motions shall be made unless at the return term, and within the first six days thereof.

In what cases defendant may file plea in abatement.

Sec. 25. In all cases where property or effects shall be attached, the defendant may file a plea, in the nature of a plea in abatement, without oath, putting in issue the truth of the facts alleged in the affidavit, on which the attachment was sued out. (*k*)

Upon such issue, plaintiff shall prove the facts alleged.

Sec. 26. Upon such issue, the plaintiff shall be held to prove the existence of the facts alleged by him, as the ground of the attachment, and if the issue be found for him, the cause shall proceed; but if it be found for the defendant, the suit shall be dismissed at the costs of the plaintiff, and he, and his securities, shall be liable on their bond, for all damages occasioned by the attachment, or other proceedings in the cause. (*ll*)

(*k*) A plea in the nature of a plea in abatement, in proceedings by attachment, puts in issue, not the belief of the creditor in the existence of the facts sworn to, but the existence of the facts themselves. Chenault vs. Chapron & Niedelet, 5 Missouri Rep., 438. It is not necessary to put in issue the goodness of the plaintiff's reasons for his belief. Dider, *et al.* vs. Courtney, 7 Missouri Rep., 500. Scott, J., dissenting. A plea, in the nature of a plea in abatement, only denies the facts alleged in the plaintiff's affidavit, and, therefore, a misnomer cannot be taken advantage of under that plea, but must be specially pleaded. Swan, *et al.* vs. O'Fallon, *et al.*, 7 Missouri Rep., 231. An attachment ought not to be dissolved on motion of the plaintiff, and against the consent of the defendant, after plea in the nature of a plea in abatement filed. Mense vs. Osborn, 5 Missouri Rep., 544.

(*ll*) See Fugate vs. Glasscock, 7 Missouri Rep., 577.

Plaintiff may exhibit allegations and interrogatories against garnishees.

Sec. 27. The plaintiff may exhibit in the cause written allegations and interrogatories touching the property, effects and credits attached in the hands of any garnishee, and require such garnishee to make full, direct and true answers to the same, upon oath.

Interrogatories, &c., when to be filed.

Sec. 28. The allegations and interrogatories shall be filed at the return term of the writ, and within the first three days thereof, if the term shall so long continue; and if not, then before the end of the term, and not afterwards, unless, for good cause shown, the court shall order otherwise.

When garnishee shall file answer. Failing to answer, judgment by default.

New section.

Sec. 29. Upon the filing the interrogatories and allegations aforesaid, the garnishee shall exhibit and file his answer thereto, on oath, during such term, unless, for good cause shown, the court shall order otherwise: in default of such answer, the plaintiff may take judgment, by default, against him, or the court may, upon motion, compel him to answer, by attachment of his body.

Judgments by default, how rendered final. Extent and effect of, against garnishee.

Sec. 30. Such judgment, by default, may be proceeded on to final judgment, in like manner as in case of defendants in actions upon contracts; but no final judgment shall be rendered against the garnishee, until there shall be final judgment against the defendant, and in no case for a greater amount than the amount sworn to by the plaintiff, with interest and costs, or for a greater amount than the garnishee shall appear to be liable for the defendant.

Answer of garnishee excepted to, adjudged insufficient, proceedings thereon.

Sec. 31. The plaintiff may except to the answer of any garnishee for insufficiency, and if the same shall be adjudged insufficient, the court may allow the garnishee to amend his answer, in such time and on such terms as shall be just, or the plaintiff may take judgment by default, or move the court to attach the body of the garnishee, to compel a sufficient answer. (*l*)

How answer of garnishee may be denied.

Sec. 32. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. (3)

If effects found in the hands of garnishee, judgment.

Sec. 33. If, on such trial, property or effects of the defendant be found in the hands of the garnishee, the value thereof shall be assessed, and judgment shall be for the proper amount in money.

Proceedings on answer of garnishee.

Sec. 34. If the answer of the garnishee be not excepted to, or denied, in proper time, it shall be taken to be true and sufficient.

(*l*) See Bretherton, administrator, vs. Anderson, 6 Missouri Rep., 388.

(3) If the answer of a garnishee is not denied in a proper manner, the garnishee should move to dismiss the proceedings against him, and not demur to the denial. Tuttle vs. Gordon, 8 Missouri Rep., 152.

When judgment may be rendered on answer of garnishee.

Sec. 35. If, by the answer not excepted to nor denied, it shall appear that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the value of the property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee; and, in such case, the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

Allowance of garnishee.

Costs, how settled.

Sec. 36. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

When garnishee may discharge himself.

Sec. 37. Whenever any property, effects, money, or debts, belonging or owing to the defendant, shall be confessed, or found by the court or jury, to be in the hands of the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the proper officer.

Debts not yet due defendant may be attached.

Sec. 38. Debts not yet due to the defendant may be attached, but no execution shall be awarded against the garnishee for debts, until they shall become due.

When and how persons may interplead proceedings thereon.

Sec. 39. Any person claiming property, money, effects, or credits attached, may interplead in the cause, and issues may be made upon such interpleader, and shall be tried as like issues between plaintiff and defendant, and without any unnecessary delay; and no judgment shall be rendered against the garnishee, in whose hands the same may be, until the interpleader shall be determined.

Costs in cases of interpleader.

Sec. 40. In all cases of interpleader, costs may be adjudged for or against either party, as in ordinary actions.

Proceedings to obtain attachment in aid of ordinary process.

Sec. 41. Any plaintiff in an action of debt, covenant, or assumpsit, which shall have been commenced by summons, and without original attachment, may, at any time pending the suit, and before final judgment, sue out an attachment in such action on filing an affidavit and bond, as required in cases of original attachment.

Other writs of attachment may be awarded, when.

Sec. 42. If, at any time after the return of an attachment, it shall appear to the satisfaction of the court, that the property, effects and credits attached will not be sufficient to satisfy the demand sworn to, the court may award other writs of attachment until sufficient property, effects or credits shall be attached to satisfy the demand.

Such writs to be entitled in the cause, &c.

Sec. 43. Every writ of attachment sued out by virtue of either of the two last sections, shall be entitled in the cause pending, and be in aid thereof.

Form of writ.

Sec. 44. The form of the writ shall, as well as may be, conform to that of original attachments, (reciting briefly the circumstances) except that the clause of summons, as to all defendants previously summoned, shall be omitted.

How to be served and returned. Proceedings.

Sec. 45. Such writs of attachment shall be served and returned in the same manner, and the like proceedings shall be had thereon, as are required or allowed on original attachments, in all things as near as may be.

Defendant not served, may appear and plead to the merits, when.

Sec. 46. Every defendant not served with a summons may, at any time before final judgment against him, appear and plead to the merits of the action, on such terms as the court may direct.

In what cases an attachment may be dissolved before final judgment.

Sec. 47. Attachments may be dissolved on motion made in behalf of the defendant, at any time before final judgment, in the following cases: (*m*) *First.* When the affidavits on which the same were founded, shall be adjudged by the court insufficient. (*n*) But no attachment shall be dissolved in such case, if the plaintiff shall file a good and sufficient affidavit, to be approved by the court, in such time and manner as the court shall direct. (*o*) *Second.* When the defendant shall appear and plead to the action, and give bond to the plaintiff, with good and sufficient security, to be approved by the court, in double the amount of the property, effects and credits attached, conditioned that such property, effects and credits shall be forthcoming, and abide the judgment which shall be rendered in the cause, when and where the court shall direct. *Third.* When the defendant shall appear and plead to the action, and give like bond and security, in a sum sufficient to satisfy the debt sworn to, in behalf of the plaintiff, with interest and costs of suit, conditioned that the defendant shall pay to the plaintiff the amount which may be adjudged in favor of the plaintiff, interest and all costs of suit, on or before the first day of the next term after that at which judgment shall be rendered.

(*m*) It is error in the circuit court to dissolve an attachment on motion of the plaintiff, and against the consent of the defendant, after a plea in the nature of a plea in abatement filed. and to proceed to try the cause on the plea in bar. Mense vs. Osborn, 5 Missouri Rep., 544, A writ of error does not lie to reverse an order of the circuit court, dissolving an attachment. Per Pettibone, J., in Lane vs. Fellows, 1 Missouri Rep., 355. *Vide*, Whiting & Williams vs. Budd, 5 Missouri Rep., 443, and Evans vs. King, 7 Missouri Rep., 411, as to the consequence of an appearance and motion to dissolve.

(*n*) The reporter's head note to the case of Graham vs. Bradbury, 7 Missouri Rep., 281, is calculated to mislead. The note reads thus: "An attachment *cannot* be dissolved on the ground that the facts do not authorize the issuing of an attachment." The language of Scott, J., in delivering the opinion of the court, is: "An attachment *may* be quashed when it is issued on such a state of facts as does not authorize the issuing of the writ. It is not pretended that the affidavit in this case is not sufficient to support the attachment. If the truth of the facts on which it is issued is controverted, it must be put in issue by a plea in the nature of a plea in abatement."

(*o*) Although a plaintiff may file a good and sufficient affidavit, after the affidavit upon which the writ issued has been adjudged insufficient, he cannot be permitted, after sueing out a writ of attachment in vacation without filing a bond as the law requires, to file a bond *nunc pro tunc*, either in vacation or, at the ensuing term. Stevenson & Hord vs. Robbins, 5 Missouri Rep., 19.

SEC. 48. When property shall be actually seized, which is likely to perish or depreciate in value before the probable termination of the suit, or the keeping of which would be attended with much loss or expense, the court, or judge in vacation, may order the same to be sold by the sheriff or other officer having charge of the property, and the sale shall be conducted in like manner, as near as may be, as sales of goods under writs of *fieri facias*.

Perishable property may be sold, when.

SEC. 49. The proceeds of such sales shall remain in the hands of the officer, subject to be disposed of as the property would have been subject if it had remained in specie.

Proceeds to remain with the officer.

SEC. 50. The order of sale, when made in vacation, shall be delivered to the clerk of the court, and filed in the cause, and the clerk shall deliver to the officer having charge of the property a copy of every order of sale, whether made in term or vacation, and such officer shall make return thereof to the court at such time as shall be expressed in the order, showing how he has executed the same, and what funds remain in his hands.

Order of sale, proceedings of the clerk and officer thereon.

SEC. 51. In cases where the judgment is rendered against the defendant, upon publication of notice, without service of a summons, or his appearance to the action, he shall be allowed three years, and no longer, from the date of the judgment, to appear and disprove or avoid the debt or damages adjudged against him, or any part thereof.

Three years' time after judgment allowed defendant to appear, &c.

SEC. 52. In order to disprove or avoid the debt or damages, as mentioned in the preceding section, the defendant may petition the court in which the judgment was rendered, setting forth the grounds on which he resists the demand of the plaintiff, and furnish the plaintiff with a copy of the petition fifteen days before the same shall be presented, with a written notice endorsed on the copy, of the day and place, when and where the petition will be presented.

Proceedings to disprove and avoid debt. Petition.

Notice.

SEC. 53. If the petition deny the cause of action on which the judgment was rendered, and be verified by the oath of the petitioner, the plaintiff shall be required to prove the same, and in default thereof it shall be adjudged that the debt and damages are disproved and avoided.

If petition deny the cause of action, plaintiff required to prove it, &c.

SEC. 54. If the petition denying the cause of action be not verified by oath, or if the petition allege a set-off, or other collateral avoidance of the original cause of action, the petitioner shall be required to prove his allegations, and on his failure to do so, his petition shall be dismissed, and the original judgment shall stand absolute; and if any part thereof remain unpaid, a general judgment shall be rendered against him for the balance remaining unpaid.

Further proceedings on petition.

Plaintiff served petition and notice, required to answer. Effect of failure.

Sec. 55. When any such petition shall be exhibited, the plaintiff, being served with a copy and notice as aforesaid, shall appear and answer the same, and on his failure to do so, the petition shall be taken to be true, and judgment rendered accordingly.

If petition alleges set-off, &c., proceedings.

Sec. 56. When the petition alleges a set off, or other collateral avoidance of the cause of action, the plaintiff may answer or plead to the same as in ordinary actions, and in default of such answer or plea, judgment may be taken in like manner, and with like effect, as in ordinary actions on contracts.

Issues on petitions, how tried.

Sec. 57. All issues joined by or under such petitions, shall be tried as like issues joined in ordinary actions on contracts.

Costs, judgment for on petitions.

Sec. 58. The costs in proceedings on such petitions shall be the same as in ordinary actions, and the same judgment shall be rendered for them. And if the judgment be against the original plaintiff, he shall be adjudged, also, to pay all costs in the original proceedings.

Executions on judgments in attachment, how awarded.

Sec. 59. Executions may be awarded and issued on judgments in attachment causes, according to the circumstances of each case, as follows: *First.* Where there is a general judgment against the defendant, the execution shall be a common *fieri facias*, which may be levied upon all the property of the defendant, (subject to execution,) whether attached in the cause or not. *Second.* Where there is a special judgment against the property, money or effects, attached, the execution shall be a special *fieri facias* against such property, money or effects, only, and may be levied upon the same, whether in the hands of the officer, or secured by bond, as provided in this article, (*p*) and shall not be for more than the amount sworn to in the affidavit for the attachment, with interest and costs thereon. *Third.* Where the judgment is against a garnishee, the execution shall be such as may be allowed and used in the same court, on general judgments, in common actions on contracts.

Compensation to officer for keeping property attached.

Sec. 60. When property shall be seized on attachment, the court may allow to the officer having charge thereof, such compensation for his trouble, and expenses in keeping the same, as shall be reasonable and just.

Power of court to prescribe rules of proceeding.

Sec. 61. The court having jurisdiction may, by rule, prescribe the time and manner of excepting to and denying the answers of garnishees, of interpleading, of exhibiting or filing any

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(*p*) When property of the defendant attached in the hands of a third person, is retained, by giving bond and security for the forthcoming of the property, the attachment continues to be a lien on the property. Evans vs. King, 7 Missouri Rep., 411. In the case of Sweringen vs. administrator of Eberius, 7 Missouri Rep., 421., Tompkins, J., held (Scott, J., expressly declining to give an opinion as to the point,) that the lien of an attachment is lost by the death of the debtor.

papers, or taking any needful step in any attachment cause, where the time and manner of doing the same are not prescribed in this article.

SEC. 62. No property or effects, exempt by law from execution, shall be attached or seized, in any suit against a defendant who is a resident of, or residing in this territory.

What property exempt from attachment.

SEC. 63. If any creditor, having a demand exceeding five dollars, and not exceeding fifty dollars, shall, in addition to the affidavit required by this act in order to sue by attachment, file an affidavit, stating that the defendant has not, within this territory, any goods, chattels or effects, liable to attachment issued by a justice of the peace, such creditor may sue in the superior court.

In what cases demands for less than $50, may be collected by attachment in the superior court.

SEC. 64. The superior court, and justices of the peace, shall have concurrent jurisdiction in attachment causes, where the demand sworn to is not less than fifty dollars, nor more than one hundred and fifty dollars, and shall be evidenced by a bond or note for the direct payment of money, and where the demand sworn to shall not be less than fifty nor more than ninety dollars, and shall be founded upon a contract other than a bond or note.

Superior courts and justices of the peace to have concurrent jurisdiction over demands exceeding $50 and not exceeding $150.

ARTICLE II.

Of attachment before justices of the peace.

§ 1. In what cases creditor may sue by attachment.
2. Proceedings to procure writ. Instrument sued on, affidavit and bond to be filed.
3. How affidavit and bond shall be made and executed.
4. Justice to approve and endorse his approval on bond, &c.
5. Form of the writ of attachment.
6. How issued and returned.
7. When defendant is summoned, proceedings as in ordinary actions.
8. Manner of serving writs.
9. Property attached in the hands of any person other than defendant, may be retained by giving bond. Condition of bond.
10. Officer to return all bonds taken, and schedule of property.
11. Return of no property on execution, constable to assign bond to plaintiff. Judgment to be rendered on motion.
12. Notice of such motion to be given, when and how.
§ 13. Assignee may sue in his own name on bond, when and how.
14. If the officer fail to return a sufficient bond, he may be ruled to give bond by the justice, when. Failing to give such bond, deemed security. Extent of liability.
15. When defendant may file plea in abatement.
16. On such issues, plaintiff to prove the facts alleged.
17. Defendant not summoned or appearing, justice to order notice to be given. How published.
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23. Garnishee may answer before return of attachment, when.

§ 24. How garnishee's answer to be filed, or taken by justice.
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26. When final judgment shall be rendered against garnishee.
27. When plaintiff may deny answer of garnishee.
28. Justice to reduce denial to writing.
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31. If answer of garnishee not denied, it shall be taken as confessed.
32. Answer not denied, and garnishee possessed of property, proceedings.
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35. Justice to notice substance of interpleader.
36. Issues on interplea must be determined before judgment against garnishee.
37. Costs, how adjudged in case of interpleader.
38. Attachments, how and for what causes dissolved.
§ 39. Proceedings when attachment is dissolved.
40. Defendant, on publication of notice, not appearing, one year allowed him to appear and disprove, or avoid judgment.
41. Proceedings to disprove or avoid, to be by petition. Notice to be given to plaintiff.
42. Proceedings on petition.
43. Further proceedings on petition.
44. Executions, how to be issued.
45. Compensation to officer for keeping property attached.
46. Property exempt from execution, not to be attached.
47. On return of no property found, transcript to be certified to circuit court.
48. If there be a sufficient bond and affidavit certified, clerk to issue writ as in case of original attachment.
49. If bond and affidavit not sufficient, clerk not to issue till sufficient bond and affidavit be filed.
50. Suit founded on bond, bill or note, and plaintiff withdraws it, justice to endorse thereon the amount paid.
51. Person may maintain action when claim is not due: Proviso.

In what cases creditors may sue by attachment.

Section 1. Creditors, whose demands, due upon bonds or notes for the direct payment of money, amount to not more than one hundred and fifty dollars; and creditors whose demands, due upon contracts other than bonds and notes, amount to not more than ninety dollars, may sue their debtors, by attachment, in the following cases: (a) *First.* Where the debtor is not a resident of, nor residing within this territory. (b) *Second.* Where the debtor conceals himself, so that the ordinary process of law cannot be served upon him. *Third.* Where the debtor has absconded, or absented himself from his usual place of abode in this territory, so that the ordinary process of law cannot be served upon him. *Fourth.* Where the debtor is about to remove his property or effects out of this territory, with intent to defraud, hinder or delay his creditors. *Fifth.* Where the debtor has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors. *Sixth.* Where the debtor has fraudulently concealed or disposed of his property, so as to hinder or delay his creditors. *Seventh.* Where the debtor is about, fraudulently, to convey or assign his property or effects, so as to hinder or delay his creditors. (bb) *Eighth.* Where the debtor is about, fraudulently, to conceal or dispose of his property or effects, so as to hinder or delay his creditors. *Ninth.* Where the debt was contracted out of this territory, and the debtor has absconded or secretly removed his property or effects to this territory, with intent to defraud, hinder or delay his creditors.

(a) *Vide*, note (a) to first article.
(b) *Vide*, note (b) to first article.
(bb) *Vide*, note (c) to first article.

Proceedings to procure writ.

SEC. 2. Any such creditor, wishing to sue his debtor by attachment, may apply to any justice of the peace, who would have jurisdiction of the debt if the suit were brought in the ordinary form, and if the cause of action be a bond or note, shall file the same with the justice, and if it be any other kind of contract, shall file, with the justice, a bill of the items of the account, or some plain and intelligible statement of the cause of action, together with an affidavit and bond: and thereupon, the justice shall issue a writ of attachment against the personal property and effects of the defendant.

Instrument sued on, affidavit and bond to be filed.

How affidavit and bond made and executed.

SEC. 3. The affidavit and bond required by the preceding section, shall be made and executed in conformity to the provisions of the third and fourth sections of the first article of this act. (*c*)

Justice to approve and endorse his approval on bond, &c.

SEC. 4. Before any attachment shall be issued by a justice of the peace, the sufficiency of the penalty and the security in the bond shall be approved by him, and his approval endorsed by him on the bond, and the account, statement or instrument to be sued on, together with the affidavit and bond, shall be filed with the justice in the cause. (*d*)

Form of the writ of attachment.

SEC. 5. The writ of attachment shall be in the form, or to the effect, following: "The territory of Kansas to the constable of the township of ———, in the county of ———, greeting: You are hereby commanded to attach C. D., by all and singular, his goods, chattels, moneys, effects and credits, or so much thereof as shall be sufficient to satisfy the sum of ———, (the sum sworn to,) with interest and costs of suit, in whosesoever hands or possession the same may be found in your township, so that he be and appear before me, E. F., a justice of the peace, within and for the said township and county, at my office in said township, on the ——— day of ——— 18—, to answer the complaint of A. B., and that you summon the said C. D., to appear before me, the said justice, at the time and place aforesaid, to answer the action of the plaintiff; and also, that you summon as garnishees, all such persons found in your township, as may be directed by the plaintiff or his agent, to appear before the said justice at the time and place aforesaid, to answer such interrogatories, as the justice may propound, and have you then and there

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(*c*) *Vide*, note (*d*) to first article.

(*d*) *Vide*, note (*e*) to first article.

this writ. Witness my hand and seal, this —— day of ——, 18——.

"E. F., *J. P.* [seal.]"

How issued and returned.

Sec. 6. Writs of attachments shall be issued and returned in like time and manner as ordinary writs of summons.

When defendant is summoned, proceedings as in ordinary actions.

Sec. 7. When the defendant is summoned to appear, the like proceedings shall be had between him and the plaintiff, as in ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

Manner of serving writs.

Sec. 8. The manner of serving writs of attachment shall be as follows: *First.* The writ shall be served upon the defendant as an ordinary summons. *Second.* Garnishees shall be summoned by the constable, declaring to them that he does summon them to appear before the justice at the return day of the writ, to answer the interrogatories which may be put to them by the justice, and by reading the writ of attachment to them, if required. *Third.* When goods and chattels, money, or evidences of debt, are to be attached, the constable shall seize the same and keep them in his custody, if accessible; and if not accessible, he shall declare to the person in possession thereof, that he attaches the same in his hands, and summon such person as garnishee. *Fourth.* When credits are to be attached, the constable shall declare to the debtor of the defendant, that he attaches in his hands all debts due from him to the defendant, or so much thereof as may be sufficient to satisfy the debt sued for, with interest and costs, and summon the debtor as garnishee. (*e*)

Property attached in the hands of a person other than defendant, may be retained by giving bond.

Sec. 9. When the property of the defendant, found in his possession, or in the hands or possession of any other person, shall be attached, the defendant, or such other person, may retain possession thereof, by giving bond and security, to the satisfaction of the officer executing the writ, to the constable, his successor, or their assigns, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice. (*f*)

Officer to return all bonds taken and schedule of property.

Sec. 10. The officer executing the writ of attachment shall return with the writ all bonds taken by him in virtue thereof, and a schedule of all property and effects attached, and the names of all the garnishees.

Return of no property on execution, constable to assign bond to plaintiff.

Sec. 11. When a return of no property found shall be made upon an execution, issued upon a judgment in an attachment suit against the defendant, the justice shall direct the constable to as-

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(*e*) *Vide*, note (*i*) to first article.

(*f*) *Vide*, note (*j*) to first article.

sign to the plaintiff, his executors or administrators, the bond taken by him for the forthcoming of the property attached, and the justice may, upon motion, render judgment in favor of the plaintiff, against the obligor in the bond, for the value of such property; or if the property should be greater in value than the amount due upon such execution, then for the amount due, together with twenty per cent. damages upon such value or amount due.

Judgment to be rendered on motion.

SEC. 12. No judgment shall be rendered upon such motion, unless the plaintiff shall have given the obligors in the bond at least ten days' notice in writing of such motion.

Notice of such motion to be given, when and how.

SEC. 13. If the penalty of the bond exceed one hundred and fifty dollars, the assignee of the constable may sue thereon in his own name, in any court having jurisdiction thereof.

Assignee may sue in his own name on bond, when.

SEC. 14. If the officer fail to return a good and sufficient bond, in any case where bond is required by this act, the justice may, upon motion of the plaintiff, rule the constable to file a good and sufficient bond, to be judged of by the justice, on or before the next law day of said justice; and in default thereof, such officer shall be held and considered as security for the performance of all acts, and the payment of all money, to secure the performance and payment of which, such bond ought to have been taken, and he and his securities shall be liable therefor on his official bond. But no such motion shall be made, unless on the law day to which the writ is returnable.

If the officer fail to return a sufficient bond, he may be ruled to give bond by the justice.

Failing to give such bond, deemed security.

Extent of liability.

New section.

SEC. 15. In all cases where property or effects shall be attached, the defendant may put in issue, by a verbal plea, in the nature of a plea in abatement, without oath, the substance of which shall be noted by the justice on his docket, the existence of the facts alleged in the affidavit, on which the attachment was sued out. (g)

When defendant may file plea in abatement.

SEC. 16. Upon such issue, the plaintiff shall be held to prove the existence of the facts alleged by him, as the ground of the attachment, and if the issue be found for him, the cause shall proceed, but if it be found for the defendant, the suit shall be dismissed at the costs of the plaintiff, and he and his securities shall be liable on their bond for all damages occasioned by the attachment, or other proceedings in the case.

On such issue, plaintiff to prove the facts alleged.

SEC. 17. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket, requiring the plaintiff to give notice to the defendant, by four written or printed advertisements, set up at four of

Defendant not summoned or appearing, justice to order notice to be given.

How published.

(g) *Vide*, note (k) to first article.

the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at the next law day, (stating the time and place,) judgment will be rendered against him, and his property sold to pay the debt.

Notice to be given, when.

SEC. 18. Such notices shall be set up at least twenty days before the next law day of the justice, and the setting up thereof may be proved either by the return of the constable upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the cause.

How proved.

Judgment by default, when entered.

SEC. 19. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, judgment by default may be entered, which may be proceeded on to final judgment in like manner as in ordinary actions.

Such judgment and execution to bind only the property attached.

SEC. 20. Such judgments shall bind only the property and effects attached, and no execution shall issue thereon against any property of the defendant, nor against his body, nor shall any action be brought thereon.

Perishable property may be sold, when.

SEC. 21. When property shall be seized on attachment, which is likely to perish or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the constable, in the same manner, and on the same notice, as goods are required to be sold on *fieri facias*, and the proceeds of such sale shall remain in the hands of the constable, subject to be disposed of as the property would have been subject if it had remained in specie.

Proceedings thereon.

Interrogatories to be propounded to garnishee.

SEC. 22. When any garnishee shall appear before the justice to answer, the following interrogatories, and none other, shall be propounded to him, to be answered on oath. *First.* At the time of the service of the garnishment, had you in your possession, or under your control, any moneys, goods or effects of the defendant? If so, state what property, how much, and of what value, and what money or effects? *Second.* At the time of the service of the garnishment, did you owe the defendant any money, or do you owe him any now? If so, how much, on what account, and when did it become due, if not yet due, when will it become due?

Garnishee may answer before return of attachment, when.

SEC. 23. Any garnishee being summoned, may, at his option, appear and answer the interrogatories, before the return day of the attachment.

How garnishee's answer to be filed, or taken by justice.

SEC. 24. The garnishee may file his answer in writing, under oath, with the justice, or the justice may, at his request, write the answer of the garnishee to each interrogatory, separately, and file the answer as a paper in the cause.

Garnishee failing to appear, or answer, judgment by default may be taken against him.

SEC. 25. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers, upon oath, to the interrogatories, the plaintiff may take judgment against him by default, which may be proceeded on to final judgment, in like manner as in cases between plaintiff and defendant; or, at the option of the plaintiff, the justice shall attach the body of the garnishee, until he shall make full and distinct answers to the interrogatories (*h*)

Proceedings thereon.

Final judgment against garnishee, when.

SEC. 26. No final judgment shall be rendered against a garnishee, until there shall be final judgment against the defendant.

When plaintiff may deny answer of garnishee.

SEC. 27. The plaintiff may deny the answer of the garnishee, or any part thereof, on the same day on which the answer is made, if it be a regular law day; and if not, in such time as the justice shall direct.

Justice to reduce denial to writing

SEC. 28. The justice shall reduce to writing such denial, showing what part is denied, and what not denied, and file it as a paper in the cause.

Issues between plaintiff and garnishee, how tried.

SEC. 29. All issues between the plaintiff and a garnishee shall be tried as ordinary issues between plaintiff and defendant, and costs may be adjudged for or against either party, as in ordinary actions.

If property found in hands of garnishee, judgment.

SEC. 30. If, upon the trial of any such issue, property or effects shall be found in the hands of any garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the proper amount in money.

Answer of garnishee taken as confessed, when.

SEC. 31. If the answer of the garnishee be not denied in proper time, it shall be taken to be true and sufficient.

Answer not denied, and garnishee possessed of property, proceedings.

SEC. 32. If, by the answer not denied, it shall appear that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the justice shall assess the value of such property or effects, and ascertain the amount of such indebtedness, and shall render judgment for the proper amount in money.

When garnishee may discharge himself by surrendering, &c.

SEC. 33. Any garnishee having in his possession property, money or effects of the defendant, may discharge himself by sur-

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(*h*) When judgment by default has been rendered against a garnishee, for failing to appear and answer interrogatories, the plaintiff must establish by competent testimony the amount of the indebtedness of such garnishee to the defendant, and final judgment can only be rendered against the garnishee for the amount which he actually owes the defendant, and not for the amount which the defendant may appear to owe to the plaintiff. When the justice, in such cases, renders final judgment against the garnishee for the amount of the plaintiff's demand against the defendant, without any evidence to establish the amount of the indebtedness of the garnishee to the defendant, the judgment is irregular, and not cured by lapse of time. Brotherton's administrator vs. Anderson, 6 Missouri Rep., 388.

rendering and paying the same, or so much thereof as shall be sufficient to satisfy the debt, interest and costs, to the constable, and taking his receipt therefor, at any time before final judgment against him.

Who may interplead.

Issues, how tried.

SEC. 34. Any person claiming property, money, effects or credits attached, may interplead verbally in the cause, and verbal issues may be taken to such interplea, and shall be tried as issues between plaintiff and defendant in ordinary cases, and without unnecessary delay.

Justice to notice substance of interplea.

SEC. 35. The justice shall note the substance of such interplea and issues upon his docket.

Judgment not to be rendered till interplea determined.

SEC. 36. No judgment shall be rendered against the garnishee in whose hands or possession the property, money, effects or credits may be, until the issues upon such interplea shall be determined. (*i*)

Costs, how adjudged.

SEC. 37. In all cases of interpleader, costs may be adjudged for or against either party, as in ordinary actions.

Attachments, how and for what causes dissolved.

SEC. 38. All attachments before justices of the peace may be dissolved on motion made in behalf of the defendant, in like cases and for like causes as are provided in regard to attachments by the forty-seventh section of the first article of this act, and for no other causes, and in no other case. (*j*)

Proceedings when attachment dissolved.

SEC. 39. When any attachment shall be dissolved, all proceedings touching the property and effects attached, and the garnishee summoned, shall be vacated, and the suit proceed as if it had commenced by summons only.

One year allowed defendant to appear and disprove or avoid judgment, &c.

SEC. 40. In cases when the judgment is rendered against the defendant, upon publication of notice, without his appearance to the action, he shall be allowed one year, and no longer, from the date of the judgment, to appear and disprove, or avoid, the debt or damages adjudged against him, or any part thereof.

Proceedings to disprove, &c., to be by petition.

Notice to be given to plaintiff.

SEC. 41. The manner of disproving or avoiding the debt or damages, shall be by petition to the justice who gave the judgment, or his successor, or to the court into which the record and papers may have been removed, stating the grounds on which he resists the claim of the plaintiff, giving the plaintiff ten days' notice of the time and place when and where the petition will be presented.

Proceedings on petition.

SEC. 42. If the petition deny the original cause of action, and be supported by the oath of the petitioner, the plaintiff shall be required to prove his demand, and, in default thereof, it shall

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(*i*) An appeal lies from a judgment of a justice of the peace, on an issue found between the plaintiff, in attachment, and an interpleader, before the final determination of the cause between the plaintiff and defendant; Weisenecker vs. Kelper, 7 Missouri Rep., 52.

(*j*) *Vide*, note (*m*) to first article.

be adjudged to be disproved and avoided, and the plaintiff shall pay the costs of the petition and of the original suit.

Further proceedings on petition.

Sec. 43. If the petition allege a set-off, or other collateral avoidance, the petitioner shall be required to prove the same, and, in default thereof, shall be adjudged to pay costs, and a general judgment may be rendered against him for any balance remaining unpaid on the original judgment and costs.

Executions, how to be issued.

Sec. 44. Executions may be issued by justices of the peace, in the same manner, and with like effect, as is provided in the fifty-ninth section of the first article of this act, in regard to executions issued out of the higher court. (*k*)

Compensation to officer for keeping property attached.

Sec. 45. When property is seized on attachment, the justice may allow the officer having charge thereof, such compensation for his trouble and expenses, in keeping and maintaining the same, as shall seem reasonable and just.

What property shall not be attached.

Sec. 46. No property or effects exempt by law from execution shall be attached or seized in any suit against a defendant who is a resident of, or residing in, this territory.

On return of no property found, transcript to be certified to circuit court.

Sec. 47. If, in any case of a suit brought before a justice of the peace, by attachment, it shall appear by the return that the defendant has not any goods, chattels, effects or credits liable to be attached by such writ, the justice shall, on the application of the plaintiff, certify a transcript of his docket, together with the process, and all the original papers in the cause, to the higher court having cognizance of the subject matter.

If sufficient bond and affidavit be certified, clerk to issue writ.

Sec. 48. Upon the filing of such transcript and papers in the office of the clerk of such court, such clerk shall, if there be a sufficient bond and affidavit, issue an attachment, as in a case originating in such court, and proceeding shall be had thereon, in such court, in all respects as if the original action had been brought in such court.

If insufficient, clerk not to issue writ till, &c.

Sec. 49. If there be not sufficient affidavit and bond certified with the justice's docket and other papers in the cause, the clerk shall not issue a writ of attachment until a sufficient affidavit and bond be filed.

Suit founded on bond, bill, or note, and plaintiff withdraws it, justice to endorse thereon the amount paid.

Sec. 50. In all cases in which a judgment may have been rendered against the defendant in attachment, without appearance, upon a bond, bill, or note, and the plaintiff shall at any time desire the withdrawal of the instrument sued on, it shall be the duty of the justice to endorse on said instrument the amount, if any, which has been paid upon the judgment, arising from the proceeds of the sale of the attached effects.

When claim is not

Sec. 51. Any person who may have a claim against another

(*k*) *Vide*, note (*p*) to first article.

due, person may maintain action.

though such claim may not be due, may nevertheless maintain his action thereon by attachment, under the provisions of this act, either in any of the superior courts or before a justice of the peace according to the amount of cuch claim; provided that in such case judgment shall not be rendered before such claim shall become due, and there shall be a stay of proceedings thereon until the same is due.

Proviso.

This act to take effect and be in force from and after its passage.

ATTACHMENT.

An Act relative to attachments.

Sec. 1. Provisions of prior act applicable to all courts in the territory.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Provisions of prior act applicable to all courts in this territory.

Sec. 1. That an act passed at the present session of this legislative assembly, entitled "an act to provide for the recovery of debts by attachment," and all the provisions thereof, be and the same is hereby made applicable to the district and all other courts of this territory, as well before as after the organization of counties; and any suit may be brought and maintained in any county of any such district as is now existing.

This act to take effect and be in force from and after its passage.

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CHAPTER 10.

ATTORNEY.

An Act to establish the office of district attorney, and to define his duties.

Sec. 1. Office of district attorney; legislature to elect; governor to commission.
2. Duties of the district attorney.
3. To give opinion and advice to civil officers.
§ 4. Not to receive fee or reward from prosecutor.
5. District court to fill vacancies.
6. To examine witnesses before grand jury.
7. Must draw and sign indictments.
8. May appoint deputies.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. There shall be and is hereby established in each judicial district of this territory, the office of district attorney, and the present session of the legislative assembly shall elect for each judicial district, by joint ballot, a district attorney, who shall hold his office for four years; and such district attorney shall be commissioned by the governor, and take oath of office prescribed by law, which commission, with the oath of office endorsed thereon, shall be recorded in the records of the district court of each county in his district.

Office of district attorney.

Legislature to elect.

Governor to commission.

SEC. 2. It shall be the duty of the district attorney of each judicial district to appear in each county, at the district court, and prosecute or defend on behalf of the territory, or any county, all suits, indictments, applications, or motions, civil or criminal, in which the territory or any county shall be a party.

Duties of the district attorney.

SEC. 3. The district attorney shall, without fee or reward, give opinions and advice to the board of commissioners and other civil officers of their respective committees, when requestsd by such board or officers, upon all matters upon which the county is or may be interested, or relating to the discharge of the official duties of such board or officers, in all cases where the territory or county may have an interest.

To give opinion and advice to civil officers.

SEC. 4. No district attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual, for services in any prosecution or business to which it shall be his duty to attend.

Not to receive fee from prosecutor.

SEC. 5. In cases of vacancy in the offices of district attorney, the district court shall fill such vacancy until the next session of the next legislative assembly thereafter, when such vacancy shall be filled as in the first section of this act specified; and when the district attorney shall be absent at any term of the court, it shall be the duty of the court to appoint a district attorney for the time being, who shall possess all the powers and perform all the duties, and be entitled to the immunities of the district attorney for and during the term, or until such district attorney shall appear in his place in court.

District court to fill vacancies.

SEC. 6. It shall be the duty of the district attorney, whenever required by the grand jury, to appear before them and examine witnesses, or give them advice in any matter connected with any business before them, or coming before them.

To examine witnesses before grand jury.

SEC. 7. The district attorney shall draw and sign all indictments, or other pleadings connected with his office.

Sign indictments.

SEC. 8. The district attorney may, in his discretion, appoint

May appoint deputies.

one or more deputy or deputies, with the consent of the court, for whose acts he shall at all times be responsible.

This act to take effect and be in force from and after its passage.

CHAPTER 11.

ATTORNEYS AT LAW.

An Act concerning attorneys at law.

§ 1. No person to practice without a license.
2. Applicants to be examined.
3. Attorneys to take oath.
4. Clerk to keep a roll.
5. Penalty for practicing without license.
6. May be stricken from the roll for certain offences.
7. Charges to be exhibited.
8. Day to be fixed for the hearing.
9. Copy of charges to be served on defendant.
10. Default, appearance may be enforced.
§ 11. Court may suspend without trial, when.
12. Court may suspend until trial, when.
13. Suspension discontinued, when, and in what cases.
14. Record of conviction, conclusive evidence.
15. Trial by jury or the court.
16. Judgment of the court.
17. Bills of exception, appeals and writs of error, allowed.
18. Effect of judgment, of removal, or suspension.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

No person to practice without a license.

SECTION 1. No person shall practice as an attorney or counsellor at law, or solicitor in chancery, in any court of record, unless he be a free white male, and obtain a license from the supreme court or district court, or some one of the judges thereof, in vacation.

Applicants to be examined.

SEC. 2. Every applicant for license to practice law, shall produce satisfactory testimonials of good moral character, and undergo a strict examination, as to his qualifications, by one of the judges.

Attorneys to take oath.

SEC. 3. Every person obtaining a license shall take an oath or affirmation to support the constitution of the United States, and to support and sustain the provisions of an act entitled "an act to organize the territories of Nebraska and Kansas," and the provisions of an act commonly known as "the Fugitive Slave Law," and faithfully to demean himself in his practice to the best of his knowledge and ability. A certificate of such oath shall be endorsed on the license.

Clerk to keep a roll.

SEC. 4. Each clerk shall keep a roll of attorneys, which shall be a record of the court.

Penalty for practicing without license.

SEC. 5. If any person shall practice law in any court of record, without being licensed, sworn and enrolled, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt.

May be stricken from the roll for certain offences.

SEC. 6. Any attorney or counsellor at law who shall be guilty of any felony or infamous crime, or improperly retaining his client's money, or of any mal-practice, deceit or misdemeanor in his professional capacity, may be removed or suspended from practice, upon charges exhibited and proceedings thereon had, as hereinafter provided.

Charges to be exhibited.

SEC. 7. Such charges may be exhibited, and proceedings thereon had in the supreme court, or in the district court, or other court of record of the county in which the offence shall have been committed, or the accused resides.

Day to be fixed for the hearing.

SEC. 8. The court in which such charges shall be exhibited, shall fix a day for the hearing, allowing a reasonable time, and the clerk shall issue a citation accordingly, with a copy of the charges annexed, which may be served in any county in this territory.

Copy of charges to be served on defendant.

SEC. 9. The copy of the charges and citation shall be served in the same manner as a declaration and summons in civil actions, a reasonable time before the return day thereof.

Default. Appearance may be enforced.

SEC. 10. If the party served with a citation shall fail to appear according to the command thereof, obedience may be enforced by attachment, or the court may proceed *ex parte*.

Court may suspend without trial, when.

SEC. 11. If the charges allege a conviction for an indictable offence, the court shall, on the production of the record of conviction, remove the person so convicted, or suspend him from practice for a limited time, according to the nature of the offence, without further trial. (a)

Court may suspend until trial, when.

SEC. 12. Upon charges other than in the last section specified, the court shall have power only to suspend the accused from practice, until the facts shall be ascertained in the manner hereinafter prescribed.

Suspension discontinued, when and in what cases.

SEC. 13. If the charge be for an indictable offence, and no indictment be found, or, being found, shall not be prosecuted to trial within six months, the suspension shall be discontinued, unless the delay be produced by the absence or procurement of the accused, in which case the suspension may be continued until a final decision.

Record of convic-

SEC. 14. The record of conviction or acquittal of any indicttion conclusive evidence.

(a) *Vide*, Strother vs. the State, 1 Missouri Rep., 412. The State vs. Watkins, 3 Missouri Rep., 337. The State vs. Foreman, 3 Missouri Rep., 412.

As to liability of an attorney, *Vide*, Benton vs. Craig, 2 Missouri Rep., 160. Upon suggestion of facts, attorney required to show some authority for conducting the suit. *Vide*, Keith vs. Wilson, 6 Missouri Rep., 435.

able offence shall, in all cases, be conclusive of the facts, and the court shall proceed thereon accordingly.

Trial by jury, or the court.

Sec. 15. When the matter charged is not indictable, a trial of the facts alleged shall be had in the court in which the charges are pending, which trial shall be by a jury, or if the accused, being served with process, fail to appear, or appearing, does not require a jury, by the court.

Judgment of the court.

Sec. 16. In all cases of conviction, the court shall pronounce judgment of removal or suspension, according to the nature of the facts found.

Bills of exception, appeals and writs of error allowed.

Sec. 17. In all cases of a trial of charges in any court, the defendant may except to any decision of the court, and may prosecute an appeal or writ of error, in all respects, as in actions at law.

Effect of judgment of removal or suspension.

Sec. 18. Every judgment or order of removal or suspension, made in pursuance of this act, by the supreme court, or by any district court, shall operate, while it continues in force, as a removal or suspension from practice, in all the courts of this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 12.

AUCTIONEERS.

An Act licensing and controlling auctioneers.

§ 1. No person to exercise the trade or business of auctioneer without license.
2. Penalty for selling without license.
3. Blank licenses to be issued.
4. Under seal.
5. To be delivered to the collector and charged to him.
6. Tribunal to settle with collectors at each term.
7. Collectors shall grant licenses on application.
8. Tax to be paid; rates.
9. Clerk's fee to be paid.
10. Bond to be given; condition.
11. Auctioneer may sell without license as vendor of merchandise.
12. Duty on sales; rates.
13. Owner or auctioneer buying; sale subject to duty.
§ 14. Sales of part to fix the price; deemed a sale of the whole.
15. Free of duty in certain cases.
16. Auctioneers to pay duty to collectors.
17. To render account according to the condition of their bond.
18. Clerk to give auctioneer certificate.
19. Clerk to charge collector, and certify to auditor.
20. Condition of bond fulfilled, clerk to endorse on the bond.
21. Auctioneer failing to comply with bond, clerk to prosecute him.
22. Collector to collect duties imposed by law, and to prosecute for fines and forfeitures.
23. Preceding sections not to be construed to permit person to sell at auction without license in certain cases.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

No person to exercise the trade or business of an auctioneer without license.

SECTION 1. No person shall exercise the trade or business of a public auctioneer, by selling any goods or other property subject to duty under this law, without a license. (*a*)

Penalty for selling without license.

SEC. 2. Every person who shall exercise the trade or business of an auctioneer, without a license, shall forfeit for every sale, five hundred dollars, together with the amount of duty payable by law upon the property sold.

Blank licenses to be issued.

SEC. 3. The clerks of the respective tribunals transacting county business, shall issue, at each term, as many blank auction licenses for ten days, and for one, three, and six months respectively, as the tribunals shall direct.

Under seal.

SEC. 4. The licenses shall be under the seals of the respective tribunals transacting county business, signed by the clerk, and shall authorize the persons to whom granted to exercise the trade and business of auctioneers, by selling any property, real or personal, by auction, within the county, for the period of time specified in such license.

To be delivered to the collector and charged to him.

SEC. 5. The clerk shall deliver the blank licenses so issued, to the collector of the counties respectively, and charge them with the amount thereof, in a book to be kept for that purpose.

Tribunal to settle with collectors at each term.

SEC. 6. The tribunal transacting county business shall, at every term, settle with the collector for all blank licenses delivered to him, and not before accounted for, and give him credit for all blank licenses returned, and charge him with all not returned; and, as soon as may be, the clerk shall, under the direction of the tribunal, certify to the auditor of public accounts the amount with which each collector stands charged, who shall charge such collector therewith.

Collectors shall grant licenses, &c.

SEC. 7. Each collector shall grant to any person, upon application, and upon compliance with the requirements of this law, an auction license, for ten days, or for one, three, or six months, and for that purpose shall fill up and countersign one of the blank licenses received from the clerk.

Tax to be paid.

SEC. 8. There shall be levied upon every license to be paid to the collector, before the delivery thereof, as follows:

Rates.

First. On each license for ten days, ten dollars.

(*a*) An indictment, charging that the defendant "did exercise the business of a public auctioneer, and did then and there at public auction unlawfully sell goods, wares, and merchandise," &c., pursues the essential descriptive words of the statute, and is good. Vaughn vs. the State, 4 Missouri Rep., 530. It is error to charge two persons with jointly exercising the business of an auctioneer. *Ib.*

An auctioneer in the city of Saint Louis is required to obtain a license from the state, as well as from the corporation of the city. *Vide*, Simpson vs. Savage, 1 Missouri Rep., 255.

Second. On each license for one month, twenty-five dollars.

Third. On each license for three months, fifty dollars.

Fourth. On each license for six months, seventy-five dollars.

Clerk's fee to be paid.

SEC. 9. In each case of a license delivered, there shall be paid to the collector one dollar, as a fee to the clerk; and no person shall be permitted to sell property at auction, of any kind, unless he shall have resided in the territory of Kansas one month next preceding the time of making application for license.

Bond to be given.

SEC. 10. Before any license shall be granted, the applicant shall give bond to the territory of Kansas, in a sum not exceeding three thousand dollars, nor less than five hundred dollars, with one or more sufficient securities, residents of the county, (the amount of the bond and the sufficiency of the security to be determined by the collector,) with condition that he will, on the first Monday of February, May, August and November, in each year, while he shall continue the business of auctioneer, render to the clerk of the tribunal transacting county business a true and particular account, in writing, of the aggregate amount, in money, of all property subject to duty by this law, sold by him at auction, or sold at his auction store or rooms at private sale: that is to say, first, from the date of the bond until such of the aforesaid days as shall ensue next thereafter, and thenceforth from the day to which any account shall last have been rendered, until such of the said days as shall next thereafter ensue, and so on in succession, from one of the said days to another, so long as he shall continue to exercise the calling of an auctioneer; and, also, shall pay all suey sums of money as shall be due to the territory, upon such sales, to the collector of the proper county, and the bond shall be filed in the office of the clerk of the tribunal.

Condition.

Auctioneer may sell without license, &c.

SEC. 11. Any licensed auctioneer may sell or retail goods at his auction store or rooms, so long as he continues the business of an auctioneer, without a license as vendor of merchandise, so that he render true account of the sales, and pay the like duty thereon as if such sales were made at auction.

Duty on sales.

SEC. 12. There shall be levied and paid upon the proceeds of the sales of all property at auction, (except as hereinafter excepted,) a duty to the territory, as follows:

Rates.

First. On the proceeds of all sales of personal property, one and a half per cent.

Second. On the proceeds of all sales of real estate, or leasehold interest in lands, one-eighth of one per cent.

Owner or auctioneer buying,

SEC. 13. In all cases where the auctioneer, or owner of the property sold, or any person employed by them, or either of them, shall become the purchaser, such sales shall be subject to the same duties as if any other person had become the purchaser.

Sale subject to duty.

SEC. 14. All sales at auction of any part or parcel of any merchandise, or other property, with a design to ascertain and fix a price for the whole or any part thereof, without exposing the whole or such other part to public sale, shall be deemed a sale at auction of the whole or such part of the property, the price of which was designed to be fixed by such public sale of the part, and duties shall be paid thereon accordingly.

Sales of part to fix the price, deemed a sale of the whole.

SEC. 15. Sales of property at auction, shall be free of duty in the following cases:

Free of duty in certain cases.

First. When directed by any statute of this territory or of the United States.

Second. In execution of any order, judgment, or decree, of any court or justice of the peace of this territory, or court of the United States.

Third. In cases of bankruptcy, or insolvency, pursuant to any law of this territory, or of the United States.

Fourth. When sold by any trustee, in conformity to a deed of trust, to secure the payment of debts.

Fifth. Property of deceased persons, sold by authority of executors or administrators.

Sixth. Boats, vessels, rafts, lumber and other property wrecked, stranded, or found adrift, in any of the waters of or adjoining this territory.

Seventh. Slaves, live stock, agricultural productions, farming utensils, and household and kitchen furniture, sold at the residence of the owner.

Eighth. Land or leasehold interest therein, sold on the premises.

SEC. 16. The auctioneer shall pay over to the collectors of the proper counties all the duties imposed by this law; and for that purpose may retain the amount out of the proceeds of the property sold, and shall be allowed a commission of one per centum on the amount so paid.

Auctioneers to pay duty to collectors.

SEC. 17. Auctioneers shall render their accounts, according to the condition of their bond, to the clerk of the tribunal transacting county business of the respective counties in which they transact their business, and shall make oath or affirmation, before such clerk, to the truth of every such account rendered; in default of which, such account shall be deemed truly rendered, according to the condition of their bond.

To render accoun according to the condition of their bond.

SEC. 18. Upon such account being rendered, the clerk shall

Clerk to give auctioneer certificate.

ascertain the amount of duties to be paid by the auctioneer, and give him a certificate thereof, and the auctioneer shall pay the same to the collector within twenty days thereafter; and upon producing to the clerk the receipt of the collector for the amount, the clerk shall grant him a *quietus* therefor.

Clerk to charge collectors and certify to auditor.

SEC. 19. The clerk shall charge the collector with the amount rendered, and certify the same to the auditor of public accounts, without delay, and the auditor shall charge the collector accordingly.

Condition of the bond fulfilled, clerk to endorse certificate thereon.

SEC. 20. When it shall appear to the satisfaction of the clerk of the proper tribunal transacting county business, that any auctioneer has fulfilled the condition of his bond, and the requirements of this law, he shall endorse a certificate thereof upon his bond, which shall be *prima facie* evidence of the condition down to that time.

Auctioneer failing to comply with bond, clerk to prosecute him.

SEC. 21. When any auctioneer shall fail to fulfil the condition of his bond, or the requirements of this law, the proper clerk shall cause him to be prosecuted on his bond; and if judgment shall be rendered against him, his license shall be thereby vacated, and he shall be incapable to receive a new license, unless by the express direction of the tribunal transacting county business.

Collector to prosecute for fines, &c.

SEC. 22. It shall be the duty of the collectors in the several counties, to collect the duties imposed by this law, and to prosecute for all fines and forfeitures which may be incurred under it.

This act not to permit persons to sell at auction without license, except, &c.

SEC. 23. The preceding sections of this act shall not be construed so as to permit any person to sell goods or other property at auction, in any town or city in this territory where there is a licensed auctioneer, without having first obtained a license for that purpose, except officers of the town or city, or of the county or territory, or of the United States, in discharge of their duty, executors, administrators, guardians, or other persons, in discharge of a duty imposed on them by law, and farmers who may wish to sell horses or other live stock when taken to market.

This act to take effect and be in force from and after its passage.

CHAPTER 13.

AUDITOR AND TREASURER.

An Act to fix the salary of auditor and treasurer.

§ 1. Compensation of auditor and treasurer: and auditor to perform duties of register of lands.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Compensation of auditor and treasurer.

Proviso.

Auditor to perform duties of register of lands.

SECTION 1. The auditor and treasurer of this territory shall receive a salary of four hundred dollars per annum each, which shall be paid quarterly out of the territorial treasury; and in addition to such salary, the said auditor and treasurer shall each receive as additional compensation for their services, five per cent. upon all money paid into the territorial treasury as revenue, or arising from any sources of taxation, fines or forfeitures: provided that the compensation of such officers shall not exceed one thousand dollars per annum. The auditor shall be and he is hereby required to perform the duties of register of lands.

This act to take effect and be in force from and after its passage.

CHAPTER 14.

BILLS OF EXCHANGE.

An Act concerning bills of exchange and negotiable promissory notes.

§ 1. Acceptance to be in writing.
2. On separate paper, when to bind acceptor.
3. Unconditional promise to accept, effect of.
4. Refusal to write acceptance on bill, dishonor.
5. Construction of preceding section.
6. Destruction, or refusal to deliver bill, deemed an acceptance.
7. Damages on bills protested for non-acceptance.
8. Damages on bills protested for non-payment.
9. Construction of the two preceding sections.
§ 10. Damages to be recovered by certain persons only.
11. No damages allowed if paid within twenty days.
12. Damages in lieu of interest, charges of protest and other charges.
13. Bills payable in money of the United States, rate of exchange disregarded.
14. Bills payable in foreign currency, rate of exchange to govern.
15. Payees and endorsers, when they may sue the makers and endorsers.
16. Notes payable to the order of maker or fictitious person, if negotiated, its effects, &c.
17. Notarial protest, evidence of demand and refusal to pay.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Acceptance to be in writing.

SECTION 1. No person within this territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

On separate paper, when to bind acceptor.

SEC. 2. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, in faith thereof, shall have received the bill for a valuable consideration.

Unconditional promise to accept, effect of.

SEC. 3. An unconditional promise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person to whom such written promise shall have been shown, and who, upon the faith thereof, shall have received the bill for a valuable consideration.

Refusal to write acceptance on bill, dishonor.

SEC. 4. Every holder of a bill presenting the same for acceptance, may require that the acceptance be written on the bill, and a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

Construction of preceding sections.

SEC. 5. The preceding sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

Destruction or refusal to deliver bill, deemed an acceptance.

SEC. 6. Every person upon whom a bill of exchange may be drawn, and to whom the same shall be delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such period as the holder may allow to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same.

Damages on bills protested for non-acceptance.

SEC. 7. When any bill of exchange expressed to be for value received, (*a*) drawn or negotiated within this territory, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, there shall be allowed and paid to the holders (*b*) by the drawer and endorsers, having due notice of the dishonor of the bill, damages in the following cases: *First*. If the bill shall have been drawn on any person, at any

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(*a*) To entitle a party to damages upon a protested bill of exchange, drawn or negotiated within this state, the bill must express to be for *"value received."* Riggs vs. the city of St. Louis, 7 Missouri Rep., 438. A bill drawn, payable *in currency*, is not a bill of exchange within the meaning of our statute, concerning bills exchange, consequently the holder is not entitled to damages allowed by the statute in cases of dishonored bills. Farwell *et al.*, vs. Kennett, *et al.*, 7 Missouri Rep., 595.

(*b*) Our statute in relation to damages on bills of exchange is not limited to the holder of the bill at the time it became due. Riggin vs. Collier & Pettus, 6 Missouri Rep., 568.

place within this territory, at the rate of four per centum on the principal sum specified in the bill. *Second.* If the bill shall have been drawn on any person, at any place out of this territory, but within the United States or the territories thereof, at the rate of ten per centum on the principal sum specified in the bill. *Third.* If the bill shall have been drawn on any person, at any port or place without the United States and their territories, at the rate of twenty per centum on the principal sum specified in the bill.

Damages on bills protested for non-payment.

SEC. 8. If any bill of exchange, expressed to be for value received, shall be drawn on any person, at any place within this territory, and accepted, and payment shall not be duly made by the acceptor, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases: *First.* If the bill be drawn by any person, at any place within this territory, at the rate of four per centum on the principal sum therein specified. *Second.* If the bill be drawn by any person, at any place without this territory, but within the United States or their territories, at the rate of ten per centum on the principal sum specified in the bill. *Third.* If the bill be drawn by any person, at a place without the United States and their territories, at the rate of twenty per centum on the principal sum therein specified.

Construction of the two preceding sections.

SEC. 9. The two preceding sections shall not be construed to require notice of non-acceptance or non-payment, in any case where such notice is not required to be given at common law.

Damages to be recovered by certain persons only.

SEC. 10. The damages allowed by this act shall be recovered only by the holder of a bill who shall have purchased the same, or acquired some interest therein for a valuable consideration.

No damages allowed if paid within twenty days.

SEC. 11. In cases of non-acceptance or non-payment of a bill drawn at any place within this territory, on any person at a place within the same, no damages shall be recovered, if payment of the principal sum, with the interest and charges of protest, be paid within twenty days after demand or notice of the dishonor of the bill.

Damages in lieu of interest, charges of protest and other charges.

SEC. 12. The damages allowed by this act shall be in lieu of interest, charges of protest and other charges and expenses incurred previous to, or at the time of giving notice, or at the time the principal sum shall become payable, when no notice of the dishonor is required to be given; but the holder of such bill shall be entitled to demand and receive lawful interest on the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time notice shall have been given, and the payment of the principal sum demanded.

Bills payable in the money of the

SEC. 13. If the contents of a bill be expressed in the money

United States, rates of exchange disregarded.

of account of the United States, the amount due and the damages thereon shall be ascertained and determined without any reference to the rate of exchange existing between this territory and the place on which the bill shall have been drawn, at the time of demand of payment of notice of the dishonor of the bill.

Payable in foreign currency, rate of exchange to govern.

Sec. 14. If the contents of such bill be expressed in the money of account, or currency of any foreign country, then the amount due, exclusive of damages, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency at the time of payment.

Payees and endorsers may sue makers and endorsers, when.

Sec. 15. The payees and endorsers of every such (*c*) negotiable note, payable to them or order, and the holder of every such note, payable to bearer, (*d*) may maintain actions for the sums of money therein mentioned, against the makers and endorsers of them respectively, in like manner as in cases of inland bills of exchange, and not otherwise. (*e*)

(*c*) The word "*such*" did not occupy this position in the revision of 1835. For the reason of its insertion now, see Pooocke vs. Blount, 6 Missouri Rep., 343.

(*d*) Beatty vs. Anderson, 5 Missouri Rep., 447.

(*e*) This section applies not to the form of the action to be used by the holder of a negotiable note, but was intended to give the holder the same remedy against the maker and endorser respectively, as in case of inland bills of exchange, and, consequently, petition in debt may be maintained by the holder against the maker thereof; Warne vs. Hill, 7 Missouri Rep., 40. *Vide*, Bogy vs. Keil, 1 Missouri Rep., 743; Himes vs. McKinney, 3 Missouri Rep., 383; Singleton vs. Mann, administrator, 3 Missouri Rep., 464. It is not necessary that an order should state, that it was drawn for value received of the drawer. Griffith vs. Cotrill's administrator, 1 Missouri Rep., 480. In Klunk vs. O'Fallon, administrator, 1 Missouri Rep., 481. Pettibone, J., says the rule is well settled, that, as between the endorsee and his immediate endorser, the consideration may be enquired into, and the endorsee can recover no more than the consideration which he has paid for the bill, and cites Brown vs. Mott, 7 John's. Rep., 361; Brolau vs. Hess, 13 John's Rep., 52; Wiffin vs. Roberts, 1 Esp. N. P., 261. A demand of payment at the counting-room of the acceptor, of his clerk, is sufficient, without showing any special authority given to the clerk, in regard to such matters, by his principal. Demand of payment and protest of a bill on the third day of grace is proper. The notary's protest is evidence of presentment and refusal to pay. The notary may prove presentment for payment, refusal and notice, although he keeps a register of these matters. Where payment of a bill is demanded, it should be produced. Proof that notice was sent by mail to Hannibal, the place of residence of the drawer, and that witness believed (but was not positive,) there was a post office there in that year, is insufficient. Draper vs. Clemens, 4 Missouri Rep., 52. When the endorser of a bill boarded with the drawer, but transacted business in a different house, notice of non-payment delivered to the drawer, was held insufficient, to charge endorser. The notice should have been served on the endorser, or left at his dwelling-house, if he had one, or place of transacting business, or facts shown from which notice might have been inferred; Baily vs. The Bank, 7 Missouri Rep., 467. The *bona fide* vendors of a bill of exchange, on which the endorsement of the payee is forged, are entitled to notice of the dishonor of the bill. The holder must use reasonable diligence: what is reasonable diligence, must depend upon the circumstances of the case; per Tompkins, J., in Collier & Pettus vs. Budd, 7 Missouri Rep., 485. In this case the judgment below was in favor of the plaintiff, appellee. Scott, J., on the authority of the case of the Bank of the United States vs. the Bank of Georgia, 10 Wheat., 333, was in favor of reversing the judgment. Napton, J., dissenting. *Vide*, the following cases: Little's administrator, vs. Pratte, 1 Missouri Rep., 202; The Bank vs. Hall, 7 Missouri Rep., 273; Bent vs. Brainard, 1 Missouri Rep., 283; Holms & Elliott vs. Aull et al., 1 Missouri Rep., 420; Robinson vs. Johnson, 1 Missouri Rep., 435; Mense vs. Osborn, 5 Missouri Rep., 544; Sweeney vs. Willing, 6 Missouri Rep., 174; Thoms vs. Greene, 6 Missouri Rep., 482; Moore vs. The Bank, 6 Missouri Rep., 379; Warne vs. Anderson

Sec. 16. Such negotiable promissory notes, made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

Notes to the order of maker, or fictitious person, if negotiated, its effects. &c.

Sec. 17. A notarial protest is evidence of a demand and refusal to pay a bill of exchange, or negotiable promissory note, at the time and in the manner stated in such protest.

Notarial protest evidence of demand and refusal to pay.

This act to take effect and be in force from and after its passage.

CHAPTER 15.

BOATMEN.

An Act concerning boatmen, boats and vessels.

Article I. Of boatmen, their duties and liabilities.
II. Of the mode of procedure by and against boats and vessels.

ARTICLE 1.

Of boatmen, their duties and liabilities.

§ 1. Contracts to be specifically performed.
2. May be in writing.
3. To be acknowledged.
4. Original copy evidence.
5. Memorandum of the day and hour, boatman to render himself.
6. Upon complaint made, justice may issue a warrant.
7. Justice shall determine complaint in a summary manner.
8. Crew liable for negligence.
9. Boatman making complaint, justice to issue a summons.
10. May discharge complainant.
11. Master or owner not to sell or barter certain things to boatmen.
§ 12. Charge for spirituous liquors not recoverable, except in some cases.
13. Penalty for harboring boatmen.
14. No sum above five dollars to be recovered until end of voyage.
15. Note taken from boatman and antedated, void.
16. Proceedings to conform to proceedings in civil cases.
17. Trial by jury.
18. Proceedings to be summary.
19. Boatman shall not be arrested until arrearages are paid, &c.
20. Appeal allowed.
21. This act to extend to contracts made without the territory.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Section 1. All contracts and agreements entered into by any

Contract to be specifically performed.

& Thompson, 7 Missouri Rep., 46, and to the last case, see note (a) to the act regulating the practice at law; Glasgow & Harrison vs. Copeland, 8 Missouri Rep., 268; Shepard vs. Citizens' Insurance Co., 8 Missouri Rep., 272. Notice of the dishonor of a bill may come from any person who holds the bill when it is dishonored, or is a party to the bill, and the holder may avail himself of the notice given, in due time, by any other party to the bill, against any other person upon the bill who would be liable to him, if he, the holder, had himself given due notice of the dishonor; Glascock vs. Bank of Missouri, 8 Missouri Rep., 443.

person, for rowing or navigating any boat or vessel, of any description, on the navigable waters within the jurisdiction of this territory, shall be specifically performed according to the intent and meaning thereof.

May be in writing.

SEC. 2. The owner, master, or commander, of any boat or vessel, bound on a voyage from any place within this territory, may, before the boat or vessel proceeds on such voyage, make an agreement in writing with any boatman engaged on board such boat or vessel, in the navigation thereof, declaring the voyage, the term of time, and the wages, for which such boatman shall be engaged.

To be acknowledged.

SEC. 3. Such contract shall be acknowledged by the parties before some justice of the peace or notary public, and filed by said officer in his office.

Original copy evidence.

SEC. 4. The original, or a copy of such contract, duly certified under the hand of such officer, shall be received in evidence in any court in this territory.

Memorandum of the day and hour boatman to render himself.

SEC. 5. At the foot of every such contract, there shall be a memorandum of the day and hour in which such boatman shall render himself on board the boat or vessel for which he has engaged, and for every hour he shall neglect or refuse to render himself on board, he shall forfeit one day's pay.

Upon complaint made, justice may issue warrant.

SEC. 6. If any boatman shall wholly neglect or refuse to render himself on board of any such boat or vessel, or having rendered himself, shall afterwards desert, or shall misbehave, neglect or refuse to do his duty, quit the boat or vessel, or otherwise violate his engagement, any justice of the peace shall, on complaint of the owner, master or commander, or other competent person, on oath or affirmation, issue his warrant, directed to any constable, commanding him to bring the delinquent forthwith before such justice.

Justice shall determine complaint in a summary manner.

SEC. 7. The justice shall hear and determine the complaint in a summary manner, and shall have power and authority to discharge the delinquent, or cause him to be sent on board, and placed in the custody of the master or commander; and may render judgment against him, for any sum not exceeding ninety dollars, unless he will enter into bond to the master or commander, with sufficient sureties, to be approved of by the justice, in a sum of at least two hundred dollars, conditioned that he will, during the remainder of the voyage, do his duty according to his contract.

Crew liable for negligence.

SEC. 8. If any boat or vessel, or part of her cargo, tackle, apparel or furniture, shall be lost, injured or destroyed, during any voyage, or while in port, through the neglect or fault of the crew, or any part of them, the master or commander may have an action against such crew, or as many of them as can be found, and recover the value of the property so lost, injured or destroyed.

Boatman making complaint, justice to issue a summons.

SEC. 9. If any boatman shall make complaint before any justice of the peace, that any master or commander of any boat or vessel, in the navigation of which such boatman is engaged, has failed to supply him with necessary provisons, or treated him with unusual severity or cruelty, or has otherwise failed to perform his contract, it shall be the duty of such justice to issue a summons, directed to the constable or other person by him specially directed to serve the same, requiring such master or commander to appear before him and answer the complaint.

May discharge complainant.

SEC. 10. If he find it just, he may discharge the complainant, and such boatman may recover against such master or commander the wages justly due him, according to the services rendered, notwithstanding such contract may be entire, in any court having jurisdiction, and may also have his action for any injury he may have sustained by reason of the conduct or fault of the master or commander.

Master or owner not to sell or barter certain things to boatman.

SEC. 11. It shall not be lawful for the master, commander or owner of any boat or vessel to sell or barter any flour, biscuit or other provisions to any boatman, whilst said boatman is in his service, and during the voyage.

Charge for spirituous liquors not to be recoverable, except in some cases.

SEC. 12. No charge made against any boatman for spirituous liquors, while employed or during his engagement, shall be recoverable or allowed, but at a reasonable rate, nor for any sum exceeding the one-tenth part of his wages, for the time in which the charges shall be made.

Penalty for harboring boatmen.

SEC. 13. If any person shall harbor or secrete any boatman belonging to any boat or vessel, knowing him to belong thereto, every such person shall pay ten dollars for every day he shall harbor or secrete such boatman, to be recovered, by the master or commander, in an action of debt.

No sum above five dollars to be recovered, until end of voyage.

SEC. 14. No sum, exceeding five dollars, shall be recovered from any boatman, by any person, for any debt contracted during the time such boatman shall actually belong to any boat or vessel, until the voyage for which such boatman engaged shall be ended.

Note taken from boatman and antedated, void.

SEC. 15. If any person shall take a note or other security, in writing, from any boatman, after he has entered into a contract, as aforesaid, and the same be ante-dated, with intent thereby to stop the boatman from proceeding on his voyage, such note or other security shall be null and void; and the person taking the same, his aiders and abetters, shall pay to the use of the person prosecuting the same, double the sum specified in such note or security, to be recovered by action of debt in any court having jurisdiction.

Proceedings to conform to proceedings in civil cases.

Sec. 16. The proceedings to be had before a justice of the peace, under this act, shall be conformed, as near as circumstances will admit, to the course of proceedings prescribed by law, in matters of a civil nature, before justices of the peace.

Trial by jury.

Sec. 17. When the sum in controversy exceeds twenty dollars, either party may require a jury, as in other cases.

Proceedings to be summary.

Sec. 18. In all cases under this act, proceedings shall be summary; and the justice shall proceed to the hearing, determination, and execution, in the most speedy manner that justice and the nature of the case will permit.

Boatmen shall not be arrested until arrearages are paid.

Sec. 19. If, upon the examination of any complaint made against a boatman, it shall appear that any part of the wages of such boatman is due and unpaid, no warrant to apprehend such boatman and send him on board, or subject him to the authority of the master or commander, shall be issued, until such arrearages are paid or tendered.

Appeal allowed.

Sec. 20. Either party may appeal to the circuit court, as in other cases of appeals from justices' courts; but no such appeal shall operate to defeat or delay the execution of any warrant for placing the boatman in the custody of the master or commander, where such boatman is adjudged to an immediate performance of his contract.

This act to extend to contracts made without the territory.

Sec. 21. The provisions of this act shall extend to all written contracts made without the limits of this territory, for rowing or navigating boats upon the navigable waters within this territory, or bordering thereon, whensoever any boat concerning which such contract has been made, and the hands thereof are found within the jurisdiction of this territory.

ARTICLE II.

Of the mode of procedure by and against boats and vessels.

§ 1. Liability of master, owner, agent or consignee of boat or vessel.
2. Priority of claim. Precedence of lien.
3. Suits may be instituted against the boat or vessel; proceedings.
4. What the complaint shall set forth; affidavit required.
5. Warrant to issue; what it shall contain.
6. Warrant, how returnable; proceedings.
7. Who may appear and plead.
§ 8. Power of court to prescribe the time of pleading; trial, when to be had.
9. If bond given to plaintiff by captain, owner, &c., before final judgment, boat to be discharged.
10. If bond be given to the sheriff, &c., boat to be delivered.
11. Application to be made for order of sale, when. Order. Notice. Sale. Return.

§ 12. Master, owner, &c., may at any time give bond before sale.
13. Officer selling, to execute to purchaser a bill of sale.
14. Upon such sale, court to appoint a time when creditors shall appear and exhibit their demands. Notice to be given.
15. Exhibition of demands; duty of court and proceedings thereon.
16. Claims allowed, to be classed according to the order of liens. Court to order distribution. Proceedings thereon.
17. Continuance may be granted. Duty of court in case of continuance, or appeal.
18. Upon final rejection of claim, where the money has been retained, distribution how made.
19. Costs, by whom paid.
20. Judgment under this act. What it shall specify. *Fieri facias* thereon.
21. Judgment may be rendered against the principal and security in the bond, when.
22. Executions, how issued and returned.
23. Justices of the peace have jurisdiction in certain cases. Plaintiff in suits before justices, to make affidavit. Nature thereof.
24. Proceedings in such suits, how conducted. Justice not to order sale of boat or vessel.
25. Warrant issued by justice, returnable forthwith.
§ 26. How served and returned.
27. Continuance not granted to plaintiff, unless, &c.
28. Fees allowed officers, &c.
29. Appeal to be allowed. Writ of error may be prosecuted.
30. No person to bind boat by admission of indebtedness.
31. Captain or clerk becoming interested in demand, shall be no longer a lien.
32. Wages, what shall be recovered. Suit, when to be instituted.
33. All suits, except first class, to be commenced within six months.
34. Boat taking cord word without consent of owner, to pay treble damages, and $20 penalty.
35. Boat or vessel may institute suit, when. Lien on transported property.
36. Joint owner or owners may institute suit against boat, when. To notify other owners.
37. Majority of owners may appoint a master and dismiss him. Such master, when dismissed, to deliver over boat, effects, &c.
38. Failure to deliver, proceedings to compel. Application to justice.
39. Justice to hear cause in a summary manner. Judgment.
40. Majority in interest of owners, to determine in what trade boat may be employed. Proceedings in case part owner refuses. Bond to be given, &c.

Liability of master, owners, agent or consignee of boat or vessel.

SECTION 1. Every boat or vessel used in navigating the waters of this territory shall be liable and subject to a lien in the following cases:

First. For all wages due to hands or persons employed on board such boat or vessel, for work done or services rendered on board the same, except for wages which may be due to the master or the clerk thereof.

Second. For all debts contracted by the master, owner, agent or consignee of such boat or vessel, on account of stores or supplies furnished for the use thereof, or on account of labor done, or materials furnished, by mechanics, tradesmen or others, in the building, repairing, getting out, furnishing or equipping thereof.

Third. For all sums due for wharfage or anchorage of such boat or vessel within the territory.

Fourth. For all demands or damages accruing from the nonperformance or mal-performance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of such boat or vessel; and for damages for injuries done to persons or property by such boat or vessel. (*a*)

Priority of claim. Precedence of lien.

Sec. 2. The classes of claims above specified shall have priority according to the order in which they are above enumerated, and the liens under this act shall have the precedence of all other liens and claims against such boat or vessel.

Suit may be instituted against boat or vessel; proceedings.

Sec. 3. Every person claiming the benefit of a lien, in either of the classes above enumerated, may commence his suit under this act, against the boat or vessel, by name, by filing a complaint against such boat or vessel, with the clerk of the court having jurisdiction of the subject matter of the county in which the boat or vessel may be found.

What the complaint shall set forth. Affidavit required.

Sec. 4. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued; it shall be verified by the affidavit of the plaintiff, or some credible person for him, and stand in lieu of a declaration. (*b*)

Warrant to issue. What it shall contain.

Sec. 5. When such complaint shall be filed, the clerk shall issue a warrant thereon, commanding the sheriff to seize the boat or vessel, mentioned in the complaint, with her tackle, apparel and furniture, and retain the same until discharged by due course of law.

Warrant, how returnable; proceedings.

Sec. 6. Such warrant shall be returnable to the same term as a summons issued at the same time would be made returnable, and, upon the return thereof, proceedings shall be had against the boat or vessel in the same manner as if suit had been instituted against the person on whose account the demand accrued.

Who may appear and plead.

Sec. 7. The owner, captain, agent, consignee, or any creditor of such boat or vessel, may appear to the action, on behalf of the boat or vessel, and plead thereto, and defend the same; but no person shall have power to confess judgment for such boat or vessel, or in any manner to admit the plaintiff's demand, unless he is authorized in writing by all the owners to do so.

Power of court to prescribe the time of pleading.

Sec. 8. The several courts shall have power by rule to prescribe the time and manner of filing the pleadings or other papers, and of taking any needful steps in suits under this act, where the same is not herein prescribed; but in all such suits the trial shall be had at the first term, unless a continuance shall

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(*a*) Bridgeford *et al.* vs. steamboat Elk, 6 Missouri Rep., 356. Erskine & Gore vs. steamboat Thames, 6 Missouri Rep., 371. Perpetual Insurance Company vs. steamboat Detroit, 6 Missouri Rep., 374. Camden & Co. vs. steamboat Georgia, 6 Missouri Rep., 381. Russel vs. steamboat Elk, 6 Missouri Rep., 553.

(*b*) Byrne vs. steamboat Elk, 6 Missouri Rep., 555. Steamboat General Brady vs. Buckley & Randolph, 6 Missouri Rep., 55; 8 Johnson vs. Strader, *et al.*, 3 Missouri Rep., 254.

be granted for cause shown; but no continuance shall operate to discharge the boat or vessel from custody.

If bond be given to plaintiff by captain, owner, &c., before final judgment, boat to be discharged.

Sec. 9. If the captain, owner, agent, or consignee, shall, before final judgment, give bond to the plaintiff, with sufficient security, to be approved by the court, or the judge or clerk thereof in vacation, or the justice of the peace before whom the action may be pending, conditioned to satisfy the amount which may be adjudged in favor of the plaintiff, against such boat or vessel, with all costs, the boat or vessel, with its tackle, apparel and furniture, shall be discharged from further detention by the officer having custody thereof, and shall be discharged from the lien of the plaintiff's demands.

If bond be given to the sheriff, &c., boat to be delivered.

Sec. 10. If the captain, owner, agent, or consignee of any boat or vessel seized and held by virtue of any warrant under this act, shall give bond to the sheriff, or other officer having custody thereof, with good security, to be approved by such officer, in double the value of the boat or vessel, conditioned for the return of the same at a time and place to be therein specified, the sheriff or other officer shall deliver the boat or the vessel to the person giving such bond; but the lien of the claim sued on shall not be discharged or affected by such proceedings.

Application to be made for order of sale, when.

Sec. 11. If a boat or vessel shall be seized under this act, and no person shall, within five days after the seizure, give bond, according to some one of the two preceding sections, the sheriff, or other officer having custody thereof, shall make a statement of the facts to the court in which the suit was instituted, or the judge thereof in vacation, and apply for an order of sale, and such court or judge shall hear the application without delay, and may make an order that the sheriff or other officer shall sell the boat or vessel to the highest bidder, for cash, after giving such notice as may be prescribed in the order, not less than twenty days, by publication in some newspaper published in or nearest to the county; and upon such sale being made, the officer making the same shall retain the money arising therefrom, subject to the order of the court under whose authority the sale was made; and the officer making the sale shall make return of his proceedings, under the order of sale, into the court from which the order issued.

Order.

Notice.

Sale.

Return.

Master, owner, &c., may at any time give bond before sale.

Sec. 12. The master, owner, agent, or consignee of the boat or vessel, may, at any time before a sale is made under the last preceding section, give bond, as provided either in the ninth or tenth section of this act, and with the effect in the said sections prescribed.

Sec. 13. When any boat or vessel shall be sold, under the

Officer selling, to execute to purchaser a bill of sale.

eleventh section of this act, the officer making the sale shall execute to the purchaser a bill of sale therefor, and such boat or vessel shall, in the hands of the purchaser and his assigns, be free and discharged from all previous liens and claims under this act.

Upon such sale, court to appoint a time when creditors shall appear and exhibit their demands.

Sec. 14. When a boat or vessel shall be sold under the foregoing provisions of this act, the court, by whose authority the sale was made, shall appoint a time at which all creditors of the boat, having a lien upon the same, shall appear and exhibit their demands in such court against such boat; and the court shall cause a notice of such appointment to be given to the creditors of the boat by a proper publication in a newspaper, which notice shall be in the form and published in the manner which the court may prescribe in each case.

Notice to be given.

Exhibition of demands, duty of court and proceedings thereon.

Sec. 15. At the time appointed by the court for the exhibition of demands against the boat or vessel sold, the creditors of such boat or vessel shall exhibit their demands to the court, and the court shall proceed to hear and allow or reject the same; and any party interested in the boat, or a creditor thereof, or any agent therefor, may appear and object to the allowance of any demand; and if either party require a jury, the claim shall be submitted to a jury under the direction of the court, without any formal pleadings, the court having power to grant a new trial as in ordinary suits at law, and with the same right of appeal by either party as in ordinary suits.

Claims allowed, to be classed according to the order of liens. Court to order distribution.

Sec. 16. When the claims against a boat or vessel are decided, those that are allowed shall be classed according to the order of liens, as in this act prescribed, and the court shall order the distribution of the nett proceeds of the sale of the boat or vessel among the creditors whose claims are thus allowed, applying the money to the entire payment of claims in a prior class before any payment shall be made upon claims in a subsequent class; and when the money to be applied to any class shall be insufficient to pay all the claims of that class, it shall be apportioned rateably among the claims in such class.

Proceedings thereon.

Continuance may be granted. Duty of court in cases of continuance, or appeal.

Sec. 17. The court may grant a continuance upon cause shown by either party when a claim is exhibited; but in such case, or in case of an appeal from the decision of the court upon a claim exhibited, the court shall proceed to distribute the money arising from the sale of the boat among the creditors whose claims are allowed according to the classification before directed, retaining in the hands of the officer making the sale, or subject to the order of the court, so much of the money as will satisfy the amount to which such claimant may become entitled, if his claim shall be finally allowed, together with the costs of the proceeding.

On final rejection of claim, &c.

Distribution, how made.

Sec. 18. Upon the final rejection of any claim, when a continuance may have been granted or an appeal taken, the money retained under the order of the court to be applied to such claims, shall be distributed among the creditors whose claims have been allowed as before directed.

Costs, by whom paid.

Sec. 19. The costs, in all cases where a demand shall be rejected, shall be paid by the claimant; where the demand is allowed, the costs shall be paid out of the money arising from the sale of the boat.

Judgment under this act.

What it shall specify.

Fieri facias thereon.

Sec. 20. If judgment in any suit under this act be rendered against any boat or vessel, the judgment shall specify to which class of liens the demand belongs; and a special writ of *fieri facias* shall be issued thereon, also specifying the class of liens to which the demand belongs, and commanding the sheriff to sell the boat or vessel, with her tackle, apparel and furniture, to satisfy the payment and all costs; and upon such writ the sheriff may sell such part of the boat or vessel, or her tackle or furniture, or such interest therein, as may be necessary to satisfy the judgment and costs. (c)

Judgment may be rendered against the principal and security in the bond, when.

Sec. 21. If bond and security be given according to the ninth section of this act, and the plaintiff shall recover judgment, the judgment shall be rendered against the principal and security on the bond, and not against the boat or vessel; and executions shall be issued against them as upon ordinary judgments at law.

Executions, how issued and returned.

Sec. 22. Executions issued under this act shall be proceeded on and returned as in case of executions issued in ordinary suits at law.

Justices of the peace have jurisdiction in certain cases.

Plaintiff, in suit before justice, to make affidavit.

Nature thereof.

Sec. 23. Justices of the peace, in their respective townships, shall have jurisdiction of all cases under this act when the demand shall not exceed the sum of one hundred dollars; but every plaintiff, at the time of instituting a suit before a justice of the peace against a boat or vessel, shall make affidavit that he has not then any other demand against such boat or vessel which is a lien thereon; and if it shall be made to appear in any suit before a justice of the peace, that the plaintiff has divided his demand in order to give jurisdiction thereof to justices of the peace, such plaintiff shall lose all lien upon the boat or vessel.

Proceedings in such suits, how conducted.

Justice not to order sale of boat or vessel.

Sec. 24. In all suits before justices of the peace, under this act, the proceedings shall conform to the law governing justices' courts, and as nearly as may be to the provisions of this act as applying to the courts having jurisdiction of the subject matter in dispute; but no justice of the peace shall have power to order the sale of any boat or vessel as provided for in the eleventh section of this act.

(c) Dobyns vs. sheriff of St. Louis county. 5 Missouri Rep., 256.

Warrant issued by justice returnable forthwith.

Sec. 25. Every warrant issued by a justice of the peace, under this act, shall be returnable forthwith, and upon the return thereof the justice shall hear and determine the complaint in a summary manner.

How served and returned.

Sec. 26. All warrants issued under this act shall be served and returned as writs of attachment are served and returned.

Continuance not granted to plaintiff, unless, &c.

Sec. 27. No continuance shall be granted by a justice of the peace to the plaintiff, unless a continuance has previously been granted on the application of some person defending the boat or vessel; and in such case, if the plaintiff, at the time to which the suit has been continued, shall show good and sufficient cause for the continuance, the justice of the peace may grant one continuance to the plaintiff.

Fees allowed officers.

Sec. 28. Sheriffs, constables and other officers shall receive the same fees and compensation for their services under this act, as are allowed for like services in suits by attachment.

Appeal to be allowed.

Writ of error may be prosecuted.

Sec. 29. The captain, agent, owner, consignee, or other person interested in the boat or vessel, or any creditor thereof, may appeal from any judgment rendered against the boat or vessel, or may prosecute a writ of error to reverse such judgment.

No person to bind boat by admission of indebtedness.

Sec. 30. Neither the captain, clerk, nor other officer of any boat or vessel, shall have power to bind the boat or vessel by giving bonds or notes, or by making any other admission of the indebtedness of the boat to any person whatever.

Demand no longer a lien, when.

Sec. 31. If the captain or clerk shall become interested in any demand of any other person against the boat or vessel of which he is an officer, such demand shall not be longer a lien upon the boat or vessel.

Wages, what shall be recovered.

Suit, when to be instituted.

Sec. 32. No more than two months' wages shall be recovered in any suit upon a lien in the first class above enumerated; and every person claiming a lien in that class shall commence his suit within thirty days after he shall have earned two months' wages; or if the contract for service be terminated in a shorter time than two months, then the suit shall be commenced within thirty days after such termination of the contract.

All suits, &c., except first class, shall be commenced within six months.

Sec. 33. All suits upon liens, in any other than the first class above enumerated, shall be commenced within six months after the cause of action shall accrue; and any failure to commence suit, as in this or the last preceding section required, shall discharge the boat or vessel from the lien of the demand claimed.

Boat taking cordwood without consent of owner, to

Sec. 34. If the master or other officer of any steamboat shall take, or cause to be taken, for the use of such boat, any cordwood from any wood-yard in this territory, without the consent of the owner, or, having such consent, shall refuse to pay the price agreed upon, or depart without paying the same, or shall wilfully pay for less than the quantity taken, and refuse to pay for the balance, such master or other officer shall be liable to pay, and the steamboat shall also be liable to pay, to the owner of such cord-wood three times the value thereof, and also the sum of twenty dollars; and treble the value of the wood taken, as also the penalty of twenty dollars, shall be a lien of the second class upon such steamboat, and may be recovered before any court having competent jurisdiction, by like proceedings and in like manner, as other demands are recoverable according to the provisions of this act.

pay treble damages and twenty dollars penalty.

SEC. 35. Any boat or vessel may institute suit, in the name of such boat or vessel, through the owner, master, agent or consignee thereof, for all freights due to such boat, for money advanced, and other charges and expenses incurred by and due to such boat, in receiving, transporting and supplying merchandise or any other articles transported in such boat, and shall have a lien on such property for the payment thereof; but such lien shall not continue after the property has been delivered by the master of the boat, and removed therefrom.

Boat or vessel may institute suit, when.

Lien on transported property.

SEC. 36. One or more joint owners of a boat or vessel may institute a suit under this act, against the boat or vessel, by name, for all demands due to him or them, on account of such boat or vessel, for repairs, supplies furnished, money advanced, or other cause of indebtedness whatever; but no such suit shall be instituted unless the plaintiff or plaintiffs shall have notified all the other owners of the boat or vessel, in writing, of his or their intention to commence such suit, at least twenty days before the commencement of the action.

Joint owner or owners may institute suit against boat, when. To notify other owners.

SEC. 37. The majority in interest of the owners of any boat or vessel shall have power to appoint a master for such boat or vessel, and dismiss him at pleasure; and whenever a master shall be thus dismissed, he shall deliver up the boat or vessel, with all its books, papers, tackle, apparel and furniture, and all other property and effects in his possession, or under his control, as master, to such owners, or the person appointed by them to receive the same.

Majority of owners may appoint a master and dismiss him. Such master, when dismissed, to deliver up boat, effects, &c.

SEC. 38. If any master shall fail or refuse to deliver up a boat, with its property, when demanded by a majority of the owners in interest, any of such owners may make application to any justice of the peace in any county where the boat may be, and file with such justice an affidavit, stating that a majority in

Failure to deliver, proceedings to compel.

Application to justice.

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interest of the owners of such boat or vessel have dismissed the master, or person acting as master, from their service as such master, and have demanded possession of the boat, with its property, and that the master has refused to deliver the same in conformity to such demand; and, thereupon, the justice of the peace shall forthwith issue a warrant to the proper constable, commanding him to take the master of such boat or vessel, and bring him forthwith before such justice of the peace, which warrant shall be executed without delay.

Justice to hear cause in a summary manner.

SEC. 39. When the master shall be brought before the justice of the peace, the justice shall hear the cause in a summary manner, and hear testimony on either side; and if it shall appear that the claimants are a majority in interest of the owners of the boat or vessel, and that they have demanded possession thereof, and that the same has been refused, the justice shall render judgment that the boat or vessel, with its books, papers, tackle, apparel and furniture, and other property belonging thereto, be restored to the claimants, and that the person proceeded against as master, pay the costs; and he shall issue a writ of restitution, commanding the constable to take the boat or vessel, with its books, papers, tackle, apparel and furniture, and other property belonging thereto, and deliver the same to the claimants, and that he make the costs out of the goods and chattels of the defendant.

Judgment.

Majority in interest of owners to determine in what trade boat may be employed. Proceedings in case part owner refuses, bond to be given, &c.

SEC. 40. The majority in interest of the owners of any boat or vessel shall have the right to determine in what trade the same shall be employed; but if any part owner shall refuse to consent that the boat or vessel shall be employed in a particular trade, the other owners may give him bond and security for the safe return of the boat or vessel, and may then employ the boat or vessel in such trade without his consent, and they shall be responsible for the safety of the boat while engaged in such trade; but the refusing owner shall have no share in the profits or loss of the boat whilst engaged in such trade, nor shall he be responsible for the debts contracted in such trade; he shall, however, be entitled to demand and recover at law, from the other owners who employ the boat in such trade, a reasonable compensation for the use of his share of the boat whilst she shall be thus employed. The sufficiency of the bond required in this section, and of the security therein, shall be judged and approved by the clerk of the district court of the county in which the boat may be, who shall endorse his approval thereon. The master or commander of any boat or vessel shall be required, whenever the same shall be demanded by a boatman, to pay to such boatman as much as ten per cent. upon the amount which may be due him; and if such master or commander refuse, such boatman is deemed to be hereby released from his contract.

This act shall take effect and be in force from and after its passage.

CHAPTER 16.

BONDS AND NOTES.

An Act concerning bonds and notes.

§ 1. Bonds and notes shall import a consideration.
2. Assignable; assignee may sue in his his own name.
3. Nature of defence not changed by assignment.
§ 4. Assignor shall not release after assignment.
5. Assignee may maintain action against assignor.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Bonds and notes shall import a consideration.

SECTION 1. All notes in writing, (*a*) made and signed by any person or his agent, (*b*) whereby he shall promise (*c*) to pay to any other person, or his order, or unto bearer, any sum of money or property therein mentioned, shall import a consideration, and be due and payable as therein specified.

Assignable. Assignee may sue in his own name.

SEC. 2. All bonds and promissory notes (*d*) for money or property shall be assignable (*e*) by an endorsement on such bonds

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(*a*) An acknowledgment of indebtedness in writing, in a specific sum and for a valuable consideration, raises a promise to pay, and is in law a note. Finney vs. Shirley & Hoffman, 7 Missouri Rep., 42. 10 Wend., 677. 2 Cowen, 536.

(*b*) In an action on a promissory note, plea non-assumpsit, the court will not permit the note to be given in evidence if it appear to have been executed by an agent, unless the authority of the agent be first proved. Wahrendorff & Ober vs. Whitaker, *et al.*, 1 Missouri Rep., 206. Bank vs. Scott, 1 Missouri Rep., 744.

(*c*) Where a person endorses a promissory note, in blank, not being a payee or endorsee, he is equally liable with the maker of the note, and may be sued as an original promisor, whether the note is negotiable like an inland bill of exchange or not. Powell vs. Thomas, 7 Missouri Rep., 440.

(*d*) Where the bond is altered or changed in a material part by the obligee, as by the erasure of the names of some of the obligors without the assent of the others, all the obligors are discharged; Briggs & Briggs vs. Glenn & Bryan, 7 Missouri Rep., 572; 1 Missouri Rep., 312. A bond given by one of several debtors for a debt due by simple contract is an extinguishment of the simple contract, and becomes the sole debt of him who executed the bond; Settle & Bacon vs. Davidson & Saunders, 7 Missouri Rep., 604; *Vide*, Brown vs. Lockhart, 410; Kennerly vs. Weed, 673; and Bailey vs. Thornhill, 711, 1 Missouri Rep.

(*e*) A note given for the payment of a certain sum in *work* is not assignable so as to enable the assignee to maintain an action thereon in his own name. Bothick's administrator vs. Purdy, 3 Missouri Rep., 83. See Able & Isbell vs. Shields, *et al.*, 7 Missouri Rep., 120, and or promissory notes, and the assignee may maintain an action thereon in his own name (*f*) against the obligor or maker, for the recovery of the money or property specified in such bonds or notes, or so much thereof as shall appear to have been due at the time of the assignment.

Nature of defence not changed by assignment.

SEC. 3. The nature of the defence of the obligor or maker shall not be changed by the assignment, but he may make the same defence against the bond or note in the hands of the assignee that he might have made against the assignor. (*g*)

Assignee shall not release after asment.

SEC. 4. It shall not be in the power of the assignor, after assignment, to release any part of the demand, (*h*) nor shall any assignee ever obtain greater title to, or interest in, any bond or note than the person had from whom he acquired it.

J. & P. Miller vs. Newman & Paulsel, 8 Missouri Rep., 355, for the law as it stood before this act was passed. When conditional assignment of a note is made, the law does not impose upon the maker the burden of ascertaining whether the condition has been performed, and the title of the assignee consequently extinguished. Able & Isbell vs. Shields, *ubi supra*. A note transferred by delivery for a valuable consideration, may be the subject of set-off. The transfer or assignment need not be in writing. Frazier & Delliner vs. Gibson, 7 Missouri Rep., 271. A transfer of a *bill* or note payable to order can only be made by the person who is legally interested, and if the person to whom it is assigned, when he took the paper, knew that the person making the transfer had no right to make it, such transfer is inoperative. McDaniel & Ousley vs. Wood & Oliver, 7 Missouri Rep., 543.

(*f*) Our statute making promissory notes assignable, and authorizing the assignee to sue in his own name, makes the assignee the legal owner of the instrument, and consequently, erroneous to institute suit in the name of the assignor, for the benefit of the assignee. Jeffers vs. Oliver, 5 Missouri Rep., 433. *Vide*, Thomas vs. Wash & Savage, 1 Missouri Rep., 666. *Vide*, also, Neyfong vs. Wells, Hard., 562. One of two payees to a note may assign all his interest in such note to the other payee, who may sue as the legal owner of the note. Smith vs. Oldham, 5 Missouri Rep., 483. *Vide*, Hubbard vs. Prather & Smiley, 1 Bibb, 180, and Bibb vs. Skinner, 2 Bibb, 57. As to endorsements in blank, see Wiggins vs. Rector's executor, 1 Missouri Rep., 478, and Menard vs. Wilkinson, 3 Missouri Rep., 92. *Vide*, Ragland vs. Ragland, 5 Missouri Rep., 54; Thomas vs. Cox, 6 Missouri Rep., 506. An assignment of all the assignor's *"goods and chattels, effects and property of every kind,"* for the purpose of paying debts due by the assignor, is not such an assignment of a bond, held by an assignor at the time of the assignment, as will enable the assignee to maintain an action thereon in his own name. Miller vs. Paulsel & Newman, 8 Missouri Rep., 355. The assignment of a bond or note must be in writing, to enable the assignee to maintain an action thereon in his own name, and the writing itself should show whether the assignment has been made; parol evidence is not admissible to prove the fact. *Ibid.* A, executed his bond to B, who assigned it to C; sometime afterwards, C brought the bond to B, with his assignment thereon erased, and B, thereupon, at the request of C, assigned the bond to E: *held*, that the erasure of the assignment did not divest C of the legal title to the bond; and, consequently, that E could not sue in his own name, as the legal owner thereof. Davis vs. Christy, 8 Missouri, Rep., 569.

(*g*) Ewing vs. Miller, 1 Missouri Rep., 234. This section was intended to embrace equitable as well as legal defences. Administrator of Barton vs. Rector, et al., 7 Missouri Rep., 524. Note the third and fourth sections are transposed in this revision. The third section of the revision of 1835 is the fourth of this, and fourth the third.

(*h*) Cleveland vs. Marks & Davis, 3 Missouri Rep., 332; S. C., 4 Missouri Rep., 206. Although it is well settled that the declaration of an assignor of a note, made after the assignment, cannot be admitted to affect the interest of the assignee, yet the assignor himself may be examined. Porter & Moore vs. Rea, 6 Missouri Rep., 48.

Assignee may maintain action against assignor.

Sec. 5. The assignee of a bond or note may maintain an action against the assignor upon failure to obtain payment from the obligor or maker, only in one of the following cases: (i) *First*, If he use due diligence (j) in the institution and prosecution of a suit at law against the obligor or maker for the recovery of the money or property due, or damages in lieu thereof. (k) *Second*, If the obligor or maker is insolvent, (l) or is not a resident of, or residing within this territory, so that a suit would be unavailing, or could not be instituted.

This act to take effect and be in force from and after its passage.

CHAPTER 17.

BONDS AND NOTES.

An Act for the speedy recovery of debts due on bonds and notes.

§ 1. Person owner of bond may sue in any court.
2. Form of petition.
3. Fact of assignment to be stated in petition.
4. Petition and assignment to be filed in clerk's office.
§ 5. When defendant to plead to the merits, &c.
6. When suit proceed to final judgment.
7. Time in which defendant shall plead.
8. What actions shall be proceeded on, &c.

(i) This section was intended to embrace all paper by the law merchant. *Vide*, Poocke vs. Blount, 6 Missouri Rep., 338. In an action against the assignor of a note, not negotiable, the declaration must aver the existence of some fact, which, under the statute, renders the assignor liable. *Vide*, Wimer vs. Shelton, 7 Missouri Rep., 266.

(j) In a suit against the assignor of a promissory note, the declaration must state the diligence made use of to recover the money from the maker of the note, that the court may judge whether *due diligence* was used. Collins vs. Warburton & Risley, 3 Missouri Rep., 202; Tompkins, J., dissenting. *Vide*, Harris vs. Harman, 3 Missouri Rep., 451.

(k) Harman vs. Armstrong, 5 Missouri Rep., 374.

(l) It does not seem necessary that the insolvency of the maker should be proved by his taking the insolvent debtor's oath—that it was not in the power of the plaintiff at any time to have made the money due on the note from the maker by suit, seems sufficient proof of insolvency, which is a mixed question of law and fact, and must be left to the determination of the jury, subject to the instructions of the court. Poocke vs. Blount, 6 Missouri Rep., 338. Suit by the assignee of a promissory note, against the administrator of the assignor, on the ground of the insolvency of the maker, proof that the visible property of the maker was not equal in value to the amount of his indebtedness, held sufficient to establish the insolvency. Pillard vs. administrators of Darst, 6 Missouri Rep., 358. Although the assignee of a note not negotiable cannot sue a remote assignor at law, yet he may in equity. A court of equity will give him a remedy by making *him* immediately liable who is alternately liable, on the principle that the court entertain jurisdiction to avoid multiplicity of suits, and in such case the original assignor may make the same defence against the remote that he could make against his immediate assignee. Smith vs. Harley, et al., 8 Missouri Rep., 559. *Vide*, Jacobs vs. McDonald, *Ibid*, 565.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Owner of a bond may sue in any court.

Section 1. Any person being the legal owner of any bond or note, for the direct payment of money or property, may sue thereon in any court of record, having jurisdiction thereof, by petition in debt.

Form of petition.

Sec. 2. The petition may be in the following form: "To the ——— court: ———, plaintiff, states that he is the legal owner of a bond, or note, (as the case may be) against the defendant, ———, to the following effect, (here insert a copy of the instrument sued upon) yet the debt remains unpaid; therefore he demands judgment for his debt, and damages for the detention thereof, together with costs.

Fact of assignment to be stated in petition.

Sec. 3. If the plaintiff be the owner of the instrument sued upon as assignee thereof, the fact of the assignment shall be stated in the petition, and the statement thereof may be in the following form: "on which are the following assignments," (here insert the assignments,) by virtue of which the plaintiff has become the owner thereof.

Petition and assignment to be filed in clerk's office.

Sec. 4. The petition, together with the instrument sued upon and the assignments, shall be filed in the clerk's office, and a writ may be sued out, executed and returned, in the same manner and with the like effect, as upon a declaration in the ordinary form.

When defendant to plead to merits of the action.

Sec. 5. If the defendant shall have been personally served with process, he shall plead to the merits of the action on or before the second day of the term at which he is bound to appear, if the term shall so long continue; if not, then within such time in the term as the court shall direct; and the suit in such cases shall be determined at the same time, unless continued for good cause.

When suit shall proceed to final judgment.

Sec. 6. A suit instituted in the form prescribed in this act, shall, except where it is herein otherwise provided, be proceeded in to final judgment and execution, in the same manner, and with the like effect, as if instituted in the ordinary form.

Time in which defendant shall plead.

Sec. 7. In all common law actions of debt, and actions of assumpsit, founded on bonds, bills, or notes, in any court of record, the defendant, if he shall have been personally served with process twenty days before the return day thereof, shall plead to the merits of the action on or before the second day of the term at which he is bound to appear, if the term shall so long continue; and if not, then within such time in the term as the court shall direct; and the suit shall, in such cases, be determined at the same time, unless continued for good cause.

What kind of actions shall be proceeded on.

Sec. 8. All common law actions of debt, and actions of assumpsit, founded on bonds, bills, or notes, except where it is otherwise provided in the preceding section, shall be proceeded in to final judgment and execution, in the same manner, and with like effect, as in ordinary cases.

This act to take effect and be in force from and after its passage.

CHAPTER 18.

BRIDGES.

An Act to provide for building bridges.

§ 1. County tribunal to determine what bridges shall be built, &c.
2. When to be built by the county.
3. Tribunal may order bridge built to be attached to road district.
4. Tribunal to determine how and of what materials bridge shall be built.
5. Commissioner appointed, to take an oath.
6. To do nothing until appropriation is made.
7. Commissioner required to make an estimate of cost of building bridge.
8. Cost to be certified to road overseers.
9. Letting of bridge to be advertised.
10. To be let by public outcry to lowest bidder; bond to be given.
11. Expense to be paid, out of what funds.
12. Proceedings when moiety of expense is raised by individual subscription.
§ 13. Bridges over streams dividing counties, how to be built; expenses, how paid.
14. Proceedings when moiety of expense is raised by subscription.
15. When tribunal shall make appropriation to repair bridge.
16. Proceedings when bridge requires repairs; commissioner's duty.
17. If repairs not made, some other person to be employed.
18. Commissioner shall not be undertaker, nor security.
19. His compensation.
20. To take necessary rock and timber from adjoining lands.
21. Tribunal may allow compensation for the same.
22. Tribunal to appoint viewers to assess damages.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Section 1. Each county tribunal shall determine what bridges shall be built and maintained at the expense of the county, and what by the road districts. Tribunal to determine what bridges shall be built, &c.

Sec. 2. When the estimated expense of a bridge shall exceed fifty dollars, it shall be built by the county. When to be built by the county.

Sec. 3. The county tribunal may order any bridge built by the county to be attached to a road district, for the purpose of being kept in repair by such road district; but when the repairs necessary at one time shall exceed in value fifty dollars, the same shall not be required to be done by such road district. Tribunal may order bridge built to be attached to road district.

Sec. 4. If the county tribunal be of opinion that a bridge is necessary, and that it shall be built at the expense of the county, they shall determine in what manner and of what materials the Tribunal to determine how and of what materials bridge shall be built.

Commissioner to be appointed.

same shall be built, and shall appoint some fit person commissioner to contract for building such bridge, and for keeping the same in repair, not less than two nor more than four years, to be determined by the county tribunal.

To take an oath.

Sec. 5. Said commissioner shall take an oath faithfully to perform the the duties enjoined on him by this act.

To do nothing until appropriation is made.

Sec. 6. The commissioner shall do nothing towards building the bridge until an appropriation for the same shall first be made by the county tribunal.

Commissioner required to make an estimate of cost of building bridge.

Sec. 7. Unless the tribunal, from its own information, shall be satisfied as to the expense of building the bridge, and shall make an appropriation accordingly, it shall be the duty of the said tribunal to require the commissioner to proceed to the spot where the bridge is to be built, and make an accurate estimate of the cost of building the same, according to any plan or plans ordered by the tribunal, or such as in his opinion may be best, and without delay make report thereof, and the tribunal then may or may not, in its discretion, make an appropriation for building the bridge, which shall in no event exceed the estimate made by the commissioner.

Cost to be certified to road overseer.

Sec. 8. If the estimated cost of the bridge shall be less than fifty dollars, then that fact shall be certified to the overseer of the road district in which the bridge is to be built; but such bridge may nevertheless be built at the expense of the county.

Letting of bridge to be advertised.

Sec. 9. The commissioner shall advertise the time and place for letting the bridge at three public places in the township where such bridge is to be built, twenty days prior to letting the same.

To be let by public outcry to lowest bidder.

Bond to be given.

Sec. 10. He shall let the same by public outcry to the person making the lowest bid, which shall in no event exceed the appropriation, and shall take bond, payable to the county, with two good and sufficient householders as securities, in such penalty as he shall deem sufficient to cover all damages which may accrue from the breach of such contract.

Expenses to be paid, out of what fund.

Sec. 11. The tribunal may order the expense of building such bridge to be paid out of any money in the county treasury.

Proceedings when moiety of estimated expense is raised by individual subscription.

Petition.

Order.

Sec. 12. When one moiety of the estimated expense of building any bridge upon any county road shall have been raised by individual subscription, and such subscription exhibited to the county tribunal with a petition from forty resident householders of the county in which such bridge is intended to be built, praying the erection thereof, the tribunal shall take such petition into consideration; and if, in their opinion, all things considered, the interest of the public will be promoted by the building of the bridge at the time, they shall make an order for building the same, and for the payment of the residue of the estimated expenses of building said bridge out of the county revenue.

SEC. 13. If a bridge be necessary over any water course which divides one county from another, the county tribunals of both counties shall unite in appointing a commissioner for building said bridge; and the expense shall be defrayed by both counties in proportion to the amount of the tax of each, to be ascertained by the tax list taken next before the contract for building such bridge shall be made.

Bridge over streams dividing counties, how to be built.

Expenses, how paid.

SEC. 14. When one moiety of the estimated expense of building such bridge shall be raised by subscription, both county tribunals, if satisfied of the expediency of so doing, shall forthwith unite to cause such bridge to be built, and shall pay the residue of the expense of the bridge in the proportion hereinbefore directed.

Proceedings when moiety of expense is raised by subscription.

SEC. 15. The county tribunal shall, whenever it is necessary, without delay, make an appropriation to repair any public bridge in the county, and whenever any bridge shall be repaired the like preliminary steps shall be had as in case of building a bridge, and the commissioner shall have the same powers, and proceed in like manner, as the commissioner for building a bridge.

Tribunal shall make appropriation to repair bridges, when.

SEC. 16. If any public bridge require repairing, which, by contract, is to be kept in repairs, the commissioner of such bridge, or if he be absent, or fails, or is incapable of acting, then a commissioner to be appointed by the county tribunal, shall give notice in writing to any one or more of the undertakers, or to his or their securities, stating the repairs necessary to be made, and requiring the same to be done within a reasonable time, to be set forth in such notice.

Proceedings when bridge requires repairs.

Commissioner to employ undertakers.

SEC. 17. If the repairs shall not be made within such time, the commissioner shall employ some other person forthwith to make the same, allowing therefor a reasonable price, and may immediately collect the amount paid, with costs, before any court of competent jurisdiction, by action of debt or assumpsit.

If repairs not made, then some other person to be employed.

SEC. 18. No commissioner shall be an undertaker for building a bridge of which he is commissioner, nor be security for any undertaker.

Commissioner shall not be undertaker nor security.

SEC. 19. He shall be allowed one dollar for each day necessarily spent in the discharge of the duties of his office, to be paid out of the county treasury or treasuries.

His compensation.

SEC. 20. He may take, or cause to be taken, from the adjoining or most convenient lands, such quantity of rock and timber as may be necessary for the building or repairing of such bridge.

To take necessary rock and timber from adjoining lands.

SEC. 21. When timber or rock shall be taken from the land

Tribunal may allow compensation.

of any individual, the county tribunal may allow compensation for the same.

Tribunal to appoint viewers to assess damages.

SEC. 22. If any person be aggrieved by the cutting of such timber or taking such rock, such person may apply to the county tribunal of the proper county, who shall appoint three disinterested householders as viewers, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any, which shall be paid out of the county treasury or treasuries.

This act to take effect and be in force from and after its passage.

CHAPTER 19.

PUBLIC BUILDINGS.

An Act to provide for the erection of public buildings at the seat of government.

§ 1. Commissioners to select ground for public buildings.
2. Duty of said commissioners.
§ 3. At what time and place said commissioners shall meet.
4. Duty of governor when conveyance and plat are filed.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners to select ground for public buildings.

SECTION 1. F. I. Marshall, H. D. McMeekin and Thomas Johnson be and are hereby appointed commissioners to select suitable ground in the town of Lecompton for the erection and location of the public buildings, for the accommodation of the governor, legislative assembly, secretary of the territory, and other officers who may be required to keep their offices at the seat of government.

Duty of said commissioners.

SEC. 2. It shall be the duty of the said commissioners to do and perform all things necessary to be done for the completion of the said public buildings, provided that this act shall be so construed as not to conflict with the duties of the governor of the territory as required by the organic act.

Time and place commissioners shall meet.

SEC. 3. That on the fifteenth day of September, 1855, the said commissioners shall meet at the town of Lecompton, and proceed to select the grounds for the purposes specified in the first section of this act, and take conveyances for said land and for the remainder of the land agreed to be conveyed by the Lecompton Town Company, in consideration of the location of the seat of government at said town, and to file such conveyance, with a plat and description of the ground so selected for each building, in the office of the secretary of state.

Duty of Governor when conveyance and plat are filed.

SEC. 4. That so soon as such conveyance and plat are filed, the secretary shall notify the governor thereof, who shall immediately proceed to cause to be erected on the grounds so selected the necessary and proper buildings for a residence and office for the governor, for the sessions of the legislative assembly, and supreme court, for the offices of the secretary of the territory, and all other officers who may be required to keep their offices at such seat of government; and he is hereby authorized to apply all moneys, that have been or may be appropriated for such purposes by congress, for the erection of such buildings.

This act to take effect and be in force from and after its passage.

CHAPTER 20.

CITIZENS.

An Act in relation to certain citizens.

§ 1. Who are declared free white citizens.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who are declared free white citizens.

SECTION 1. All persons, whether Indians or others, who are by statutory enactment, or otherwise, made citizens of the territory of Kansas, and to whom the rights of citizenship have been or may hereafter be extended, shall and are hereby declared to be, for all purposes whatever, free white citizens, and as such free white citizens shall be entitled to all the rights and privileges of such, and be subject to all the duties of free white citizens.

This act to take effect and be in force from and after its passage.

CHAPTER 21.

CLERKS.

ARTICLE I.

An Act providing for the pay of the chief and assistant clerks of the council and house of representatives.

§ 1. Pay of clerks of the present legislative assembly.
2. Not to include the regular per diem.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Pay of clerks of the present legislative assembly.

SECTION 1. That in case the secretary of the territory should refuse to give his assent to the payment of the chief and assistant clerks of the council and house of representatives, as provided in the resolution passed by the respective houses, the amount in each specified, together with one hundred dollars additional to that before specified for the chief and assistant clerks of the council, shall be paid out of any moneys in the territorial treasury not otherwise appropriated.

Not to include the regular *per diem.*

SEC. 2. Nothing in this act contained shall include the regular *per diem* allowed such clerks by the organized act of the territory.

This act to take effect and be in force from and after its passage.

ARTICLE II.

An Act supplemental to, and amendatory of "An act providing for the pay of the clerks of the present Legislature."

§ 1. Pay of assistant, enrolling and engrossing clerks, how paid.
2. Allowance to Joseph M. Fox, as engrossing clerk of the house.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Pay of assistant. Enrolling and engrossing clerk, how paid.

SECTION 1. That in case the secretary of the territory shall refuse to give his assent to the payment of the clerks, as provided in an act passed at the present session of the legislature, to which this is supplementary and amendatory, then there shall be allowed to the enrolling and engrossing clerks of each house, and the second assistant clerk of the house, the sum of four dollars per day from the day of their appointment to the expiration of the session, to be paid out of any moneys in the territorial treasury not otherwise appropriated.

Allowance to Jas. M. Fox as engrossing clerk.

SEC. 2. There shall also be allowed to Jos. M. Fox the sum of seventy-five dollars for his services as engrossing clerk to the house, to be paid as provided in the first section of this act.

This act to take effect and be in force from and after its passage.

CHAPTER 22.

CONFINEMENT AND HARD LABOR.

An Act providing a system of confinement and hard labor.

§ 1. Duty of jail keepers.
2. Who shall be termed convicts.
3. Whenever any convict shall be confined to hard labor.
4. All convicts sentenced to confinement and hard labor.
5. Tribunal transacting county business shall have charge of.
6. Jail keeper shall furnish physicians when required.
7. Governor shall appoint a master of convicts.
§ 8. Such master shall concentrate the convicts at such place as the public works demand.
9. Master shall receive compensation for services.
10. As soon as penitentiary is erected all convicts shall be removed thereto.
11. Master shall procure clothing for convicts.
12. Master shall prescribe good strong clothing suitable to the season.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Duties of jail keepers.

Section 1. Every keeper of a jail, or other public prison, within this territory, is hereby required to cause all convicts who may be confined in the prison of which he is the keeper, under sentence of confinement and hard labor, either on the streets, roads, public buildings, or other public works of the territory, or on some public works of the county in which such convicts may be imprisoned, or on private works wherever may be hereinafter specified; or if there be no public works of the territory on which to employ such convicts, or if the county wherein such convicts may be confined have no public works on which to employ such convicts, then such convicts may be employed on the public works of any other county in the territory where there may be work to employ such convicts; or such convicts may be employed on the public works of any incorporate town or city, within this territory, either in the county in which such convicts may be confined, or in some other county in the territory.

Who shall be termed convicts.

Sec. 2. Every person who may be sentenced by any court of competent jurisdiction, under any law in force within this territory, to punishment by confinement and hard labor, shall be deemed a convict, and shall immediately, under the charge of the keeper of such jail or public prison, or under the charge of such person as the keeper of such jail or public prison may select, may be put to hard labor, as in the first section of this act specified; and such keeper or other person, having charge of such convict, shall cause such convict, while engaged at such labor, to be securely confined by a chain six feet in length, of not less than four-sixteenths nor more than three-eighths of an inch links, with a

Keeper shall cause such convicts to be securely confined.

Other persons having charge of such convicts, &c.

round ball of iron, of not less than four nor more than six inches in diameter, attached, which chain shall be securely fastened to the ankle of such convict with a strong lock and key; and such keeper or other person, having charge of such convict, may, if necessary, confine such convict, while so engaged at hard labor, by other chains or other means in his discretion, so as to keep such convict secure and prevent his escape; and when there shall be two or more convicts under the charge of such keeper, or other person, such convicts shall be fastened together by strong chains, with strong locks and keys, during the time such convicts shall be engaged in hard labor without the walls of any jail or prison.

Employed at hard labor, shall receive 50 cents per day, &c.

Sec. 3. Whenever any convict shall be employed at labor for any incorporate town or city, or any county, such town, city or county shall pay into the territorial treasury the sum of fifty cents for each convict, for every day such convict shall be engaged at such labor; and whenever such convict shall be employed upon private hireing at labor, it shall be at such price, each, per day, as may be agreed upon with such keeper, or other person, having charge of such; and the proceeds of said labor shall be collected by such keeper and put into the territorial treasury.

All convicts shall be closely confined.

Keeper shall see that such convicts are securely kept.

Sec. 4. All convicts sentenced to confinement and hard labor shall, at night, and at all other times when not employed at labor, be closely confined either in some jail or prison; and every county jail, or other public prison in this territory, shall be free for the use of any keeper or other person having charge of such convicts, for the confinement of such convicts; and the said keeper or other person having charge of such convicts, shall see that such convicts are securely kept, and may, in his discretion, release such convicts from their chains while closely confined in prison, provided a due precaution be observed to prevent escape.

County tribunal shall have charge of security.

Shall furnish bibles.

Sec. 5. The tribunal transacting county business for each county, shall have a care over the security of all jails within their separate counties, and shall provide each jail with a sufficiency of blankets to secure the comfort of all persons or convicts confined therein, and shall furnish each jail with one bible for each prisoner or convict so confined.

Keeper shall secure the attendance of physician when needed.

Sec. 6. The keeper of every jail or public prison shall, whenever it may become necessary, secure the services of a physician for any prisoner or convict under his charge, and shall, at the request of any prisoner or convict, at any time, request the allowance of a minister or priest.

Governor shall appoint a master of convicts. Bond of.

Sec. 7. There shall be appointed by the governor, by and with the consent of the council, a master of convicts, who shall give bond with approved security, in such penalty as the auditor of public accounts may prescribe, conditioned for the faithful performance of the duties of his office, which bond shall be filed in the office of public accounts; and such master of convicts shall be commissioned by the governor, and take the oath of office prescribed by law, which shall be endorsed on such commission.

Other officer.

Master may concentrate convicts.

Sec. 8. Such master of convicts shall, whenever the public works at any one public place justify, order all or any number of the convicts to concentrate at such point, and shall have charge and control of such convicts any way; employ as many guards as may be necessary, not to exceed ten in number; and if the public works of any kind shall require the labor of such convicts at two or more places at the same time, such master of convicts may so dispose of them; and such master of convicts may remove such convicts, from place to place, as he may deem best in disposing of their labor; and all keepers and other persons having charge of such convicts shall be subject to the order of the master of convicts, in the disposition of the labor of such convicts.

May remove convicts to such places as he may deem necessary.

Compensation for services.

Keeper shall receive compensation.

Sec. 9. The master of convicts shall receive for his services two dollars and a half for every day he may be actually engaged in the duties of his office, and each keeper or other person having charge of convicts shall receive for his services three dollars and a half per day for each day he may be actually engaged in the discharge of the duties aforesaid, and every guard employed under the provisions of this act shall receive one dollar and a half per day for his services while so employed.

Soon as the penitentiary is erected, all convicts shall be removed thereto.

Sec. 10. So soon as a penitentiary shall have been erected in this territory, all convicts who may be confined under the provisions of this act, shall, under the order of the district court of each district in which said convicts may be confined, be placed in charge of the keeper of such penitentiary, under and by virtue of the laws governing such penitentiary; which order of such district court, entered upon the records thereof, requiring the keeper of the county jail or prison to transfer all convicts under his charge to the keeper of the penitentiary, certified under the seal of such, shall be sufficient authority to such keeper of any such jail or prison to give up any such convicts, and to such keeper of the penitentiary to receive the same; and so soon as the convicts shall be so transferred to the keeper of the penitentiary, the services of such master of convicts shall be dispensed with, and his office shall be vacated.

Shall deliver copy of record to the keeper of the penitentiary.

Services of master shall be dispensed with.

Master shall procure clothing for convicts.

Sec. 11. The master of convicts shall procure at the public expense necessary clothes, chains and manacles, that may be required for such convicts as shall be under his immediate charge, and shall see that such convicts are fed on wholesome food; and all keepers of jails or prisons, having charge of any convicts, shall procure necessary clothes, chains and manacles for such convicts as may be under their charge, and shall furnish to such convicts wholesome food; and all expenses incurred under this act shall be audited and paid out of the public fund.

Keepers of jails shall procure clothing.

Master shall prescribe good strong clothing, suitable to the season.

Sec. 12. The master of convicts shall prescribe coarse, strong clothing, suited to the season, for all convicts, which shall be uniform throughout the territory. This act shall not be so construed as to subject females to hard labor.

This act to take effect and be in force from and after its passage.

CHAPTER 23.

CONSTABLES.

An Act providing for the appointment of constables, and prescribing their duties.

§ 1. Constables, by whom appointed.
2. Shall give bond; condition of the bond; bond to be approved.
3. In certain cases to give a new bond.
4. After the approval of the new bond, the sureties of the former bond discharged.
5. How vacancies to be filled; bond to be given, &c.
6. Bond to be filed with clerk; suits for breach of, by whom brought; limitation of suits on the bond.
7. May appoint deputies; liable for their conduct.
8. Withholding money collected, may be removed from office, when and how.
§ 9. May serve criminal process, warrants and subpœnas, throughout their counties.
10. In case of vacancy in the office of constable in any township, or refusal of the proper constable to serve, &c., by whom civil process to be served.
11. Whenever summary proceedings are given against a constable, his sureties liable, &c.
12. If any township be divided, the constable in office shall continue to be constable of the township in which he resides, &c.
13. Constables and their sureties liable for money collected, whether collected by process or not.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Constables, how appointed.

Section 1. There shall be in each township, in each county in this territory, one constable, who shall be appointed by the tribunal transacting county business, and shall hold his office until the second general election.

Shall give bond; condition of the bond; bond to be approved.

Sec. 2. Every constable, within ten days after his appointment, shall give bond to the territory, with good securities, residents of the county, for not less than four hundred, nor more than ten thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all money received by him by virtue of his office, and in every respect discharge all the duties of constable according to law; the said bond shall be approved by the tribunal transacting county business, or the clerk in vacation; and, if taken by the clerk in vacation, shall be approved or rejected by the tribunal transacting county business at the next term. (*a*)

In certain cases to give a new bond.

SEC. 3. Whenever any surety of a constable shall die, or remove from the county in which he executed the bond, or become insolvent, or when, from any other cause, the tribunal shall have reason to believe that the sureties to a constable's bond are likely to become, or have become insufficient, the court shall require the constable, at a time to be appointed, to show cause why a new bond should not be given; and unless such cause be shown, the constable shall be required, within a given time, to enter into a new bond, and in default thereof, the office shall be vacant, which shall be filled as other vacancies.

After approval of new bond, sureties of former bond discharged.

SEC. 4. After the approval of such new bond by the tribunal, the sureties of the former bond shall be discharged from all liabilities that may thereafter accrue.

How vacancies to be filled, bond to be given, &c.

SEC. 5. If any vacancy occur in the office of constable, the tribunal transacting county business shall fill such vacancy by appointment of some suitable person, who shall continue in office until the next general election, and until a successor be qualified; and the constable appointed shall execute a bond similar to that given by a constable who is elected.

Bond to be filed with clerk, suits for breach of, by whom to be brought, &c.

SEC. 6. The constable's bond shall be filed with the clerk of the tribunal transacting county business, and may be sued upon at the instance of any person injured by its breach, if brought within two years from the expiration of the time for which the constable was elected or appointed.

May appoint deputies, liable for their conduct.

SEC. 7. Every constable may appoint deputies, for whose conduct he shall be answerable, which appointment shall be filed in the office of the clerk of the tribunal transacting county business.

Withholding money collected, may be removed from office, when and how.

SEC. 8. If any constable shall detain from any person any money collected by him by virtue of his office, after being required to pay the same, he shall be removed from office by the tribunal transacting county business, on motion founded on charges exhibited; a notice of the motion and a copy of the charges shall

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(*a*) The failure of the county court (or tribunal) to approve or reject a constable's bond taken by the clerk, in vacation, will not invalidate the bond. The duty enjoined upon the county court, in this respect, was intended for the security of the public, and their omission to perform such duty cannot injure the constable and his securities. Jones, *et al.*, vs. the State, to use of Blow, 7 Missouri Rep., 81.

be served on the constable ten days before the day on which the motion is made.

May serve criminal process, warrants and subpœnas, throughout their counties.

Sec. 9. Constables may serve criminal process, warrants and subpœnas, and all process against a constable and his sureties as such, throughout their respective counties, and all other process throughout their respective townships, except where it is otherwise expressly directed.

In case of vacancy in the office of constable, &c., by whom civil process to be served.

Sec. 10. In case of vacancy in the office of constable in any township, or refusal of the proper constable to serve the civil process directed to the constable of such township, the same may be executed by the constable of any adjoining township in which there may be an acting constable, to be designated by the plaintiff or justice issuing such process, in the same manner, and with like effect, as if executed and returned by the constable of the township in which the vacancy exists, or refusal occurs.

Summary proceedings given against a constable, his sureties liable, &c.

Sec. 11. Whenever summary proceedings are given against a constable, his sureties, jointly and severally, shall be liable to the same, and may, or may not, be joined with him, and such recovery may be had against them as is given against the constable.

If any township be divided, the constable in office shall continue to be the constable, &c.

Sec. 12. If any township be divided, the constable in office at the time of the division shall continue to be the constable of the township in which his residence is, and another constable shall be appointed for the other township, as in case of a vacancy.

Constables and their sureties liable for money collected, whether collected by process or not.

Sec. 13. It shall be the duty of every constable appointed after the taking effect of this act, to receive and receipt for every claim, within the jurisdiction of a justice of the peace of his township, that may be tendered him for collection; and such constable and his securities, in his official bond, shall be liable for the amount which may be collected by said constable on such claim, whether the same be collected by process or otherwise.

This act to take effect and be in force from and after its passage.

CHAPTER 24.

CONTRACTS AND PROMISES.

An Act regulating contracts and promises.

§ 1. Joint contracts declared joint and several.
2. When joint contract or debt shall survive against heir, &c.
3. When such contract shall survive against the heirs, &c., of all the deceased obligors.
§ 4. When suit may be brought against one or more co-partners, &c.
5. Scrawl equivalent to a seal.
6. What covenant or contract to repair, shall impose upon tenant.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. All contracts which, by the common law, are joint only, shall be construed to be joint and several. (*a*)

Joint contracts declared joint and several.

SEC. 2. In case of the death of one or more of the joint obligors or promisors, the joint debt or contract shall and may survive against the heirs, executors and administrators of the deceased obligor or promisor, as well as against the survivors.

When joint debt or contract shall survive against heirs, &c.

SEC. 3. When all the obligors or promisors shall die, the debt or contract shall survive against the heirs, executors and administrators of all the deceased joint obligors and promisors.

When such contract shall survive against heirs, &c., of all the deceased obligors.

SEC. 4. In all cases of joint obligations and joint assumptions of co-partners or others, suits may be brought and prosecuted against any one or more of those who are so liable. (*b*)

Suits may be brought against one or more co-partners, &c.

SEC. 5. Every instrument of writing expressed on the face thereof to be sealed, and to which the person executing the same shall affix a scrawl by way of seal, shall be deemed and judged to be sealed. (*c*)

Scrawl equivalent to seal.

(*a*) A. and B. entered into articles of agreement with C., D., E., and F., by which the latter agreed to wagon certain articles, for which each were to be paid in accordance with the amount hauled by him. Held to be a several, not a joint contract. Sublette & Vasques vs. Noland; 5 Missouri Rep., 516.

A bond given by one of several debtors, for a debt due by simple contract, is an extinguishment of the simple contract debt, and becomes the sole debt of him who executed the bond. Settle vs. Davidson; 7 Missouri Rep., 604.

(*b*) If a note is presented to one partner of a firm, for payment, it is sufficient. Hunter vs. Hemphill; 1 Missouri Rep., 48.

A bond executed to A., in the name and style of A. & Co., is the several bond of A., and he only is liable. Fletcher vs. Vanzant; 1 Missouri Rep., 139. Kennerly vs. Weed; *Ibid*, 480.

When a person executes a bond to A. or B., both must join in a suit on the bond. Baily vs. Thornhill; 1 Missouri Rep., 519.

When A. borrows money of B. himself, without saying anything about a firm, although the firm of which A is a partner may exist, and the money be applied to the payment of its debts, yet A., and not the firm, is responsible, especially when the fact is found that the loan was made on the responsibility of A. 1 Missouri Rep., 85; Wiggins vs. Hammond.

(*c*) An instrument of writing will not be considered sealed, unless by some expression in the

What covenant or contract to repair shall impose upon tenant.

Sec. 6. No covenant or contract to repair shall impose upon a tenant the obligation to rebuild or repair any building destroyed or damaged by fire, without the procurement, connivance or neglect of such tenant, his agents or servants, during the continuance of the term for which such building was leased or let, unless such tenant shall specially covenant or contract to rebuild or repair, in case of the destruction or damage of such building by fire.

This act to take effect and be in force from and after its passage.

CHAPTER 25.

CONVENTION.

An Act to provide for the call of a convention to form a state constitution.

§ 1. Poll to be opened for call of a convention.
2. Duty of the judges of election.
3. Who are entitled to vote.

§ 4. Abstract of votes.
5. Duty of Secretary of Treasury.
6. Duty of succeeding Legislature.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Poll to be opened for call of a convention.

Section 1. That there shall be, at the first general election, to come off in October, 1856, a poll opened at the several places of voting throughout this territory for taking the sense of the people of this territory upon the expediency of calling a convention to form a state constitution.

Duty of the judges of election.

Sec. 2. It shall be the duty of the judges at the several election precincts in this territory, at the election aforesaid, to cause a poll to be opened, which poll shall contain two columns, one to be headed "Convention," the other "No Convention;" and they shall cause the vote of each individual voter to be set in the appropriate column.

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body of the instrument itself, the maker should show that he intended it to be considered a specialty. Cartmill vs. Hopkins; 2 Missouri Rep., 79; Boynton vs. Reynolds, 3 Missouri Rep., 57. Nor will the word *indenture* be considered as expressing such intention. Walker vs. Keil, 8 Missouri Rep., 301. Nor the word *seal,* written in full within the scrawl. Glascock vs. Dodd, 8 Missouri Rep., 377.

To constitute a sealed instrument, under our statute, it must express on its face to be sealed; and there must be fixed a scrawl to the name, by way of seal; a mere flourish at the end of the signature, not made by way of seal, is insufficient. Grimsley vs. administrators of Michael Riley; 5 Missouri Rep., 280.

Who shall be entitled to vote.

SEC. 3. All persons qualified by the laws of the territory to vote for members of the general assembly shall be entitled to vote for or against said convention.

Abstract of votes.

SEC. 4. At the close of said election, at the several precincts in this territory, the judges thereof shall cause an abstract of the votes given for and against a convention to be made out and certified to the secretary of the territory.

Duty of secretary of the territory.

SEC. 5. The secretary of the territory shall, from the abstract of votes certified to him to be cast "for" and "against" "convention" by the said judges of elections, make a full report of the same to the next legislature thereafter.

Duty of succeeding legislature.

SEC. 6. If a majority of persons shall vote in favor of "convention" at said election held therefor, then it shall be the duty of the legislature held next after said election to provide for and make all necessary provisions for an election of members to said convention, defining their duties, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 26.

CONVEYANCES.

An Act regulating conveyances.

§ 1. Operation of conveyance to use, &c.
2. The term "heirs" not necessary to create a fee simple estate; in all conveyances of real estate, what estate shall pass, &c.
3. Title acquired by grantor after conveyance by lien enures to grantee.
4. Deeds valid, notwithstanding adverse possessions.
5. Entails not allowed; the remainder in fee simple to whom it shall pass.
6. A remainder limited to take effect on the death of any person without heirs of his body, &c., shall be construed to mean heirs or issue living at the death or the ancestor.
7. A remainder limited to the heirs, &c., of a person having a life estate in the same premises, on the termination of the life estate, the heirs, &c., shall take as purchasers.
8. Lineal and collateral warranties abolished.
§ 9. An estate limited in remainder to the son or daughter of any person to be begotten, such son or daughter born after the death of his or her father, shall take in the same manner as if born in the lifetime of the father. An estate of freehold or inheritance, may be limited by deed to take effect in the future.
10. A future estate on the contingency of the death of any person without issue, &c., defeated by the birth of a posthumous child, &c.
11. Grant of rents, &c., good without attornment of tenants, but tenant who has paid rent without notice shall not suffer damage thereby.
12. Attornment of tenant to a stranger void, except, &c.
13. Tenancy in common, when. Joint tenancy can only exist in certain cases.
14. The words "grant, bargain and sell," how to be construed; their operation.

§ 15. Conveyance in fee, or of a freehold, to be signed and sealed by the person from whom the estate is to pass or his agent.
16. Every conveyance of land to be acknowledged, or proved and certified.
17. By whom proof or acknowledgment of instruments, &c., to be taken.
18. Certificate of proof or acknowledgment to be endorsed on such instrument or conveyance.
19. Certificate, how made.
20. Acknowledgment not to be taken unless grantor be personally known or identified.
21. What facts certificate of acknowledgment shall state.
22. What proof shall be required of the execution of instruments that convey real estate.
23. When proof by subscribing witness shall be taken.
24. What facts the subscribing witnesses shall prove before certificate shall be granted.
25. What facts the certificate shall set forth.
26. Proof when the grantor and witnesses are dead.
27. Certificate of such proof, when it shall be granted.
28. What facts the certificate shall set forth.
29. Subscribing witnesses, when and how summoned to prove the execution of the instrument.
30. Remedy against persons refusing to appear and answer, &c.
31. Married woman may relinquish her dower, &c., to be acknowledged and certified.
32. Before whom such relinquishment shall be taken.
33. Married women if not personally known, identity to be ascertained, &c.; relinquishment, how taken.
§ 34. What facts the certificate shall set forth.
35. Married woman and her husband may convey real estate of wife, &c.
36. Effect of covenants in such deeds against the married woman and her heirs.
37. By whom acknowledgment of such deeds may be taken.
38. Acknowledgment not to be taken unless she be personally known or identified, &c.
39. What facts the certificate shall set forth.
40. Deeds, &c., to be recorded.
41. Shall impart notice to all persons, &c., from time of filing record.
42. No such instrument shall be valid, except in certain cases, until delivered to the recorder.
43. Powers of attorney, how acknowledged, proved and recorded.
44. When such powers shall be deemed revoked.
45. Instruments acknowledged, proved and certified, may be read in evidence.
46. When a certified copy of the instrument may be read in evidence.
47. The certificate, acknowledgment, record, &c., of such instrument shall not be conclusive evidence.
48. When such instrument shall not be received in evidence until established by other proof.
49. The extent and construction of the term "real estate."
50. This act not to embrace in its provisions last wills and testaments.
51. Conveyances of military bounty lands, how acknowledged, and when to be recorded.
52. Such instrument valid, when.
53. Such instrument filed for record, to impart notice, &c.
54. May be used in evidence without proof of execution.
55. Certified copies, when to be used in evidence.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Operation of conveyance to use, &c.

SECTION 1. That where any person or persons stand or be seized, or at any time hereafter shall stand or be seized of and in any lands, tenements or hereditaments, to the use, confidence or trust of any person or persons, or of any body politic, by reason of any bargain, sale, feoffment, covenant, contract, agreement, will or otherwise, by any manner of means whatsoever, in every such case, all and every such person or persons, and bodies politic, that have, or hereafter shall have, any such use, confidence or trust, in fee simple, for term of life or of years, or otherwise; or any use, confidence or trust in remainder or reversion, shall from thenceforth stand and be seized, deemed and adjudged in lawful seizin, estate and possession of and in the same lands, tenements and hereditaments, with their appurtenances, to all intents, constructions and purposes in law, of and in such like estates, as they had or shall have in use, confidence or trust of or in the same; and that the estate, right, title and possession, that was or shall be in such person or persons, that were or hereafter shall be seized of any lands, tenements or hereditaments, to the use, confidence or trust of any such person or persons, or of any body politic, be found henceforth clearly deemed and adjudged to be in him, her or them, that have, or hereafter shall have, such use, confidence or trust, after such quality, manner, form or condition, as they had before in or to the use, confidence or trust that was or shall be in them.

The term "heirs" not necessary to convey a fee simple estate, &c.

SEC. 2. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of any real estate, hereafter executed, shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear, by express terms, or be necessarily implied in the terms of the grant.

Title required by grantor after conveyance by him, enures to grantee.

SEC. 3. If any person shall convey any real estate, by conveyance, purporting to convey the same in fee simple absolute, and shall not, at the time of such conveyance, have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

Deeds valid, notwithstanding adverse possession.

SEC. 4. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein, in the same manner, and with like effect, as if he was in the actual possession thereof.

Entails not allowed, the remainder in fee simple, to whom it shall pass.

SEC. 5. That from and after the passage of this act, where any conveyance or devise shall be made whereby the grantee or devisee shall become seized in law or equity of such estate, in any lands or tenements, as under the statute of the thirteenth of Edward the first, (called the statute of entails) would have been held an estate in fee tail, every such conveyance or devise shall vest an estate for life only in such grantee or devisee, who shall possess and have the same power over and right in such premises, and no other, as a tenant for life thereof would have by law; and upon the death of such grantee or devisee, the said lands and tenements shall go and be vested in the children of such grantee or devisee, equally to be divided between them as tenants in common, in fee; and if there be only one child, then to that one, in fee; and if any child be dead, the part which would have come to him or her, shall go to his or her issue; and if there be no issue, then to his or her heirs.

Remainder limited to take effect on the death of any person without issue, shall be construed, how.

SEC. 6. Where a remainder in lands or tenements, goods or chattels, shall be limited, by deed or otherwise, to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Remainder limited to the heirs, &c., of a person having a life estate, how disposed of.

SEC. 7. Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate, shall be the heirs, or heirs of the body of such tenant for life, shall be entitled to take as purchasers by virtue of the remainder so limited in them.

Lineal and collateral warranties abolished.

SEC. 8. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement, shall be answerable upon such covenant or agreement, to the extent of the lands descended or devised to them, in the cases and in the manner prescribed by law.

An estate limited in remainder to the son or daughter of any person to be begotten, how disposed of.

SEC. 9. When an estate hath been, or shall be, by any conveyance, limited in remainder to the son or daughter, or to the use of the son or daughter of any person to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate, in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death. And, hereafter, an estate of freehold, or of inheritance, may be made to commence in future by deed, in like manner as by will.

A future estate on the death of any person without heirs, how defeated.

SEC. 10. A future estate, depending on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Grants of rents, &c., good without attornment of tenants, &c.

SEC. 11. Grants of rents, or of reversion, or remainders, shall be good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid the rent to the grantor, shall suffer any damage thereby.

Attornment of tenant to a stranger void, except, &c.

SEC. 12. The attornment of a tenant to any stranger shall be void, unless it be with the consent of the landlord of such tenant, or pursuant to, or in consequence of, the judgment of a court of law, or the order or decree of a court of equity.

SEC. 13. Every interest in real estate granted or devised to two or more persons, other than to executors and trustees as such, shall be a tenancy in common, unless expressly declared in such grant or devise to be in joint tenancy.

Tenants in common, when.

SEC. 14. The words "*grant*," "*bargain*," and "*sell*," in all conveyances in which any estate of inheritance in fee simple is limited, shall, unless restrained by express terms contained in such conveyances, be construed to be the following express covenants on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns: *First*, That the grantor was, at the time of the execution of such conveyance, seized of indefeasible estate, in fee simple, in the real estate thereby granted. *Second*, That such real estate was, at the time of the execution of such conveyance, free from incumbrances done or suffered by the grantor, or any person claiming under him. *Third*, For further assurances of such real estate to be made by the grantor and his heirs to the grantee and his heirs and assigns, and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance.

The words 'grant,' 'bargain,' and 'sell,' how to be construed. Their operation.

SEC. 15. Every conveyance in fee, or of a freehold estate, shall be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent. (*a*)

Every conveyance to be signed and sealed, &c.

SEC. 16. Every instrument in writing, whereby any real estate is conveyed, or may be affected in law or equity, shall be acknowledged, or proved and certified, in the manner hereinafter prescribed.

To be acknowledged, &c.

SEC. 17. The proof or acknowledgment of every conveyance or instrument in writing, affecting any real estate in law or equity, shall be taken by some one of the following courts or officers. *First*, If acknowledged or proved within this territory, by some court having a seal, or some judge, justice, or clerk thereof, or some justice of the peace of the county in which the real estate conveyed or affected is situated. *Second*, If acknowledged or proved without this territory, and within the United States, by any court of the United States, or of any state or territory having a seal, or the clerk of any such court. *Third*, If acknowledged or proved without the United States, by any court of any state, kingdom or empire, having a seal, or the mayor of any city having an official seal.

By whom proof or acknowledgment of instrument, &c., to be taken.

SEC. 18. Every court or officer that shall take the proof or acknowledgment of any conveyance or instrument of writing, af-

Certificate of proof, &c., to be endorsed on such conveyance.

(*a*) See the cases of Moss vs. Anderson; 7 Missouri Rep., 337; and McCabe vs. Hunter's heirs, *ibid*, 355; Walker vs. Keil, 8 Missouri Rep., 301.

fecting any real estate in law or equity, or the relinquishment of the dower of a married woman in the real estate of her husband, shall grant a certificate thereof, and cause such certificate to be endorsed on such instrument or conveyance.

Certificate, how made.

SEC. 19. Such certificate shall be: *First*, When granted by a court, under the seal of the court. *Second*, When granted by the clerk of the court, under the hand of the clerk and seal of the court to which he is clerk. *Third*, When granted by an officer who has a seal of office, under the hand and official seal of such officer. *Fourth*, When granted by an officer who has no seal of office, under the hand of such officer.

Acknowledgment not to be taken, unless grantor be personally known or identified.

SEC. 20. No acknowledgment of any instrument in writing, that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be taken, unless the person offering to make such acknowledgment shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such instrument as a party thereto, or shall be proved to be such by at least two credible witnesses. (*b*)

What facts certificate of acknowledgment shall state.

SEC. 21. The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by at least two witnesses, whose names shall be inserted in the certificate.

What proof shall be required of the execution of instruments that convey real estate.

SEC. 22. The proof of the execution of any instrument, in writing, that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be: *First*, by the testimony of a subscribing witness; or, *second*, when all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of at least one subscribing witness, given by at least two credible witnesses to each signature.

When proof by subscribing witness shall be taken.

SEC. 23. No proof by a subscribing witness shall be taken, unless such witness shall be personally known to at least one judge of the court, or to the officer taking the proof, to be the person whose name is subscribed to the instrument as a witness thereto, or shall be proved to be such by at least two credible witnesses.

What facts subscribing witness

SEC. 24. No certificate of such proof shall be granted, unless each subscribing witness shall prove that the person whose name

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(*b*) In certifying to the acknowledgment of a sheriff's deed, the certificate need not state that the sheriff was personally known to the court. Laughlin vs. Stone, 5 Missouri Rep., 43.

is subscribed thereto as a party, is the person who executed the same, that such person executed the instrument, and that such witness subscribed his name thereto as a witness thereof.

shall prove before certificate shall be granted.

SEC. 25. The certificate of such proof shall set forth the following matters: *First.* The fact that such subscribing witness was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to such instrument, as a witness thereto, or was proved to be such by at least two witnesses, whose names shall be inserted in the certificate. *Second.* The proof given by such witnesses, of the execution of such instrument, and of the facts that the person whose name is subscribed to such instrument as a party thereto, is the person who executed the same, and that such witness subscribed his name to such instrument as a witness thereof.

What facts the certificate shall set forth.

SEC. 26. No proof, by evidence of the handwriting of the party and of a subscribing witness, shall be taken, unless the court or officer taking the same shall be satisfied that all the subscribing witnesses to such instrument are dead, or cannot be had to prove the execution thereof.

Proof when the grantor and witnesses are dead.

SEC. 27. No certificate of any such proof shall be granted unless at least two credible witnesses state on oath or affirmation, that they personally knew the person whose name is subscribed thereto as a party, well knew his signature, (stating their means of knowledge) and believe the name of the person subscribed thereto as a party, was subscribed by such person; nor unless at least two credible witnesses shall in like manner state that they personally knew the person whose name is subscribed to such instrument as a witness, well knew his signature, (stating their means of knowledge) and believe the name subscribed thereto as a witness, was thereto subscribed by such person.

Certificate of such proof, when it shall be granted.

SEC. 28. The certificate of such proof shall set forth the names of the witnesses examined, the fact that such witnesses were sworn, and the evidence required by the last preceding section to be by them given.

What facts the certificate shall set forth.

SEC. 29. Upon the application of any grantee in any instrument in writing required by this act to be recorded, or if any person claiming under such grantee, verified by the oath of the applicant, that any witness to such instrument, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any court or officer authorized to take the acknowledgment or proof of such instrument, may issue a subpœna, requiring such witness to appear before

Subscribing witnesses, when and how summoned to prove the execution of the instrument.

such court or officer, and testify touching the execution thereof.

Remedy against persons refusing to appear and answer.

SEC. 30. Every person who, being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matters aforesaid, shall forfeit to the party injured one hundred dollars, to be recovered by action of debt, and may also be committed to prison by the officer who issued such subpœna, there to remain, without bail, until he shall submit to answer upon oath as aforesaid.

Married woman may relinquish her dower, &c.

SEC. 31. A married woman may relinquish her dower in any of the real estate of her husband, by any conveyance thereof, executed by herself and husband, and acknowledged and certified in the manner hereinafter prescribed.

Before whom such relinquishment shall be taken.

SEC. 32. Such relinquishment shall be taken before some court or officer, authorized by this act to take the proof or acknowledgment of instruments in writing, conveying real estate or affecting the same.

Married women, if not personally known, identity to be ascertained, &c.; relinquishment, how taken.

SEC. 33. No such relinquishment shall be taken, unless such married woman shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by at least two credible witnesses, nor unless she shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely, and without compulsion or undue influence of her husband.

What facts the certificate shall set forth.

SEC. 34. The certificate of such relinquishment shall set forth, that such married woman was personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such conveyance, or was proved to be such by at least two witnesses, whose names shall be inserted in the certificate; that she was made acquainted with the contents of such conveyance, and acknowledged, on an examination apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely, and without compulsion or undue influence of her husband.

Married woman and her husband may convey real estate of the wife, &c.

SEC. 35. A married woman may convey any of her real estate, by any conveyance thereof, executed by herself and husband, and acknowledged by such married woman, and certified in the manner hereinafter prescribed, by some court having a seal, or some judge, justice, or clerk thereof. (c)

(c) A conveyance by husband and wife of land held in the right of the wife, made after the introduction of the common law in 1816, and before the act of 1821, expressly authorizing

Effect of covenant in such deeds against the married woman and her heirs.

SEC. 36. No covenant, expressed or implied, in any such conveyance, shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs, all her right and interest expressed to be conveyed in such conveyance.

By whom acknowledgment of such deeds may be taken.

SEC. 37. Any court, judge, or clerk, authorized by this act to take the proof or acknowledgment of any instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, may take and certify the acknowledgment of a married woman to any such conveyance of her real estate.

Acknowledgment not to be taken, unless she be personally known or identified, &c.

SEC. 38. No such acknowledgment shall be taken unless such married woman shall be personally known to at least one judge of the court, or to the judge, justice, or clerk, taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by at least two credible witnesses, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same freely, and without compulsion or undue influence of her husband.

What facts the certificate shall set forth.

SEC. 39. The certificate of such acknowledgment shall set forth, that such married woman was personally known to at least one judge of the court, or to the judge, justice, or clerk, granting the same, to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by at least two witnesses, (whose names shall be inserted in the certificate,) and that she was made acquainted with the contents of such conveyance, and acknowledged, on an examination apart from her husband, that she executed the same freely, and without compulsion or undue influence of her husband.

Deeds, &c., to be recorded.

SEC. 40. Every instrument in writing, that conveys any real estate, or whereby any real estate may be affected in law or equity, proved or acknowledged, and certified in the manner above prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated.

Shall impart notice to all persons, &c., from time of filing for record.

SEC. 41. Every such instrument in writing, certified and recorded in the manner herein above prescribed, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and all subsequent purchasers and mortgagees shall be deemed in law and equity to purchase with notice. (*f*)

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such conveyance, is valid, both by the Spanish law and the common law. Lindell vs. McNair, 4 Missouri Rep., 380.

(*f*) A deed not duly acknowledged, though recorded, cannot be read as a recorded deed. Smith vs. Mounts, 1 Missouri Rep., 512.

Not to be valid, unless, &c.

Sec. 42. No such instrument in writing shall be valid, except between the parties thereto and such as have actual notice thereof, until the same shall be deposited with the recorder for record. (*g*)

Powers of attorney, how acknowledged, proved, &c.

Sec. 43. Every letter of attorney, or other instrument in writing, containing a power to convey any real estate, as agent or attorney, for the owner thereof, or to execute as agent or attorney, for another, any instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be acknowledged or proved, and certified and recorded as other instruments in writing, conveying or affecting real estate, are required to be acknowledged or proved, and certified and recorded.

When deemed to be revoked.

Sec. 44. No such letter of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

Instruments may be read in evidence, when.

Sec. 45. Every instrument in writing, conveying or affecting real estate, which shall be acknowledged or proved, and certified as hereinbefore prescribed, may, together with the certificates of acknowledgment, or proof and relinquishment, be read in evidence without further proof.

When a certified copy may be read in evidence.

Sec. 46. Where any such instrument is acknowledged, or proved, certified and recorded, in the manner hereinbefore prescribed, and it shall be shown to the court that such instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

Shall not be conclusive evidence, when.

Sec. 47. Neither the certificate of the acknowledgment, nor the proof of any such instrument, nor the record, nor the transcript of the record of such instrument, shall be conclusive; but the same may be rebutted.

Shall not be received in evidence until, &c.

Sec. 48. If the party, contesting the proof of any such instrument, shall make it appear that such proof was taken upon the oath of an incompetent witness, neither such instrument, nor the record thereof, shall be received in evidence until established by other competent proof.

(*g*) As to notice, see Gallagher & McCabe, vs. Hunter, 5 Missouri Rep., 507; Truesdell vs. Callaway, 6 Missouri Rep., 605; Bartlett vs. Glascock, 4 Missouri Rep., 62; Roundtree vs. Gordon, 8 Missouri Rep., 19; Halsa vs. Halsa, *Ibid.*, 303; Hill vs. Paul, 8 Missouri Rep., 479.

Construction of the term "real estate."

SEC. 49. The term real estate, as used in this act, shall be construed as co-extensive in meaning with lands, tenements and hereditaments, and as embracing all chattels real.

This act not to extend to last wills and testaments.

SEC. 50. None of the provisions of this act, in relation to the acknowledgment, proof, or recording of instruments in writing, affecting real estate, shall be construed to extend to last wills and testaments.

Conveyances of military bounty lands, how acknowledged and where to be recorded.

SEC. 51. Every instrument in writing, which conveys or in any manner affects in law or equity any real estate situate in this territory, and being part of the military bounty land in this territory, which has been or may hereafter be made and executed out of this territory and within the United States, and which has been or may hereafter be acknowledged or proved, in conformity with the laws and usage of the state, territory or district in which such instrument has been or may hereafter be made, executed, acknowledged or proved, for the execution, acknowledgment or proof of instruments in writing, conveying or affecting real estate, within such state, territory or district, shall be recorded in the county in this territory in which such land may be situated.

Such instrument valid, when.

SEC. 52. Every such instrument, thus acknowledged or proved, is hereby declared effectual and valid, to all intents and purposes, as if such acknowledgment or proof had been made in accordance with the laws of this territory.

Such instrument, filed for record, to impart notice, &c.

SEC. 53. Every such instrument which has been filed for record, or recorded in the proper office, although such filing or recording may not have been in accordance with any law in force, shall hereafter impart the same notice as if the same had been filed or recorded in accordance with law; and all such deeds, hereafter filed or recorded, shall, from the time of filing or recording the same, impart the same notice as if the same had been acknowledged or proved, and filed or recorded in accordance with the laws regulating the acknowledgment or proof of such instruments executed within this territory.

May be read in evidence, when.

SEC. 54. All such instruments filed for record, and recorded as provided in the three preceding sections, may be read in evidence on the trial of any cause, without other proof of the execution thereof.

Certified copies, when to be read in evidence.

SEC. 55. Copies of such instruments, or of the record of the same, duly certified by the recorder of the county in which the same may have been recorded, shall, upon proof of the loss or destruction of the original instrument, be read in evidence, with like effect as if such original instrument were produced and read in evidence.

This act to take effect and be in force from and after its passage.

CHAPTER 27.

CORONERS.

An Act concerning coroners.

§ 1. Tribunal to appoint a coroner; term of office.
2. To take an oath, and to give bond.
3. Duties of coroner.
4. When authorized to perform duties of sheriff, &c.
5. Shall be a conservator of the peace.
§ 6. Tribunal to examine the sufficiency of bond, &c.
7. When office declared vacant.
8. Tribunal to fill vacancy.
9. Coroners exempt from serving on jury, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Tribunal to appoint coroner. Term of office.

SECTION 1. The county commissioners, or the tribunal transacting county business, shall appoint in each county a coroner, who shall hold his office for the term of four years, and until his successor is appointed and qualified.

To take an oath and give bond.

SEC. 2. All coroners, before they enter upon the duties of their office, shall take the oath prescribed by law, and shall give bond to the territory of Kansas, in the penalty of at least one thousand dollars, with sufficient securities, residents of the county, conditioned for the faithful performance of the duties of their office.

Duties of coroner.

SEC. 3. Every coroner, within the county for which he is appointed, shall serve and execute all writs and precepts, and perform all other duties of the sheriff, when the sheriff shall be a party, or when it shall appear to the court out of which the process shall issue, or to the clerk thereof in vacation, that the sheriff is interested in the suit, related to, or prejudiced against, any party thereto, or in anywise disqualified from acting.

When coroner authorised to perform duties of sheriff, &c.

SEC. 4. When the office of sheriff shall be vacant by death or otherwise, the coroner of the county is authorized to perform all the duties which are by law required to be performed by the sheriff, until another sheriff for such county shall be appointed and qualified; and such coroner shall have notice thereof, and in such case said coroner may appoint one or more deputies, with the approbation of the judge of the district or probate court, and every such appointment, with the oath of office endorsed thereon, shall be filed in the office of the clerk of the proper court of the county.

Shall be a conservator of the peace.

SEC. 5. The coroner shall be a conservator of the peace throughout his county, and shall take inquests of violent and casual deaths happening in the same, or where the body of any person coming to his death shall be discovered in his county.

Sec. 6. The tribunal transacting county business shall, once in every year, in each county, examine into the sufficiency of the official bond given by the coroner, and the sureties thereto; and if it shall appear that the bond of any coroner, or the sureties thereto, are insufficient, the said court shall cause a record thereof to be made by their clerk, and shall give notice thereof to said coroner, and require him to give a new bond to the satisfaction of said court, within such time as they shall order.

Tribunal to examine the sufficiency of bond.

Sec. 7. If a coroner neglect to give bond and qualify within twenty days after his appointment, or shall fail to give bond when required under the preceding section, his office shall be deemed vacant.

Office, when declared vacant.

Sec. 8. Whenever any vacancy shall happen in the office of coroner, the county commissioners, or the tribunal transacting county business wherein such vacancy shall occur, shall fill such vacancies by appointment.

Tribunal to fill vacancy.

Sec. 9. All coroners shall be exempted from serving on juries and working on roads.

Coroners, exempt.

This act to take effect and be in force from and after its passage.

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CHAPTER 28.

CORPORATIONS.

An Act concerning corporations.

Article I. Of the powers and liabilities of corporations.
II. Of the mode of procedure against corporations.

ARTICLE I.

Of the powers and liabilities of corporations.

§ 1. General powers of corporation.
2. Above powers shall vest in every corporation.
3. No corporation to exercise powers except such as are necessary.
4. Not to discount bills, notes, &c.
5. What shall form a board to transact business, &c.
6. Corporate powers to cease, when.
7. Every charter subject to repeal.
8. Parol contracts binding, when.
9. First meeting of corporation, how called.
10. When justice shall issue a warrant directing call of a meeting of corporation.
§ 11. Meeting, how called.
12. When the acts of a meeting shall be valid.
13. Individual property liable to be taken on execution; proviso.
14. Officer to levy upon property of stockholders; to give notice.
15. Creditor may sue stockholders jointly or severally, &c.
16. Clerk to furnish officer with names, &c.
17. Corporation may sue members, &c.
18. Annual notice to be given, &c.
19. Directors paying dividends when corporation is insolvent, liable for all debts, &c.; proviso.

§ 20. Debts of corporation not to exceed amount of capital; directors liable.
21. Provisions not to extend to literary or benevolent associations.
22. Corporations of states, &c., liable to be sued, how.
§ 23. Corporations may convey land by deed, how.
24. On dissolution, president, directors, &c., to be trustees; powers and duties.
25. Members of municipal corporations competent witnesses; proviso.

Be it enacted by the Governor and Legislative Assembly o the Territory of Kansas, as follows:

General powers of corporations.

SECTION 1. Every corporation as such has power, *First.* To have succession by its corporate name for the period limited in its charter, and when no period is limited, for ten years. *Second.* To sue and be sued, complain and defend, in any court of law and equity. *Third.* To make and use a common seal, and alter the same at pleasure. *Fourth.* To hold, purchase and convey such real and personal estate as the purposes of the corporations shall require, not exceeding the amount limited in the charter. *Fifth.* To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable conpensation. *Sixth.* To make by-laws not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock. (*a*)

Above powers shall vest in every corporation.

SEC. 2. The powers enumerated in the preceding section shall vest in every corporation that shall hereafter be created, although they may not be specified in its charter, or in the act under which it shall be incorporated.

No corporation to exercise powers except such as are necessary.

SEC. 3. In addition to the powers enumerated in the first section of this article, and to those expressly given in the charter, or in the act under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers except such as shall be necessary to the exercise of the powers so enumerated and given.

Not to discount bills, notes, &c.

SEC. 4. No corporation created or to be created, and not expressly incorporated for banking purposes, shall, by any implication or construction, be deemed to possess the power of discounting bills, notes, or evidences of debt, of receiving deposits; of buying gold and silver, bullion, or foreign coins; of buying and selling bills of exchange; or of issuing bills, notes or evidences of debt, upon loan or for circulation as money.

(*a*) A corporation created by one government can sue in the courts of another. Bank of Edwardsville vs. Simpson, 1 Missouri Rep., 129. As to the seals of corporations, see Perry vs. Price, 1 Missouri Rep., 474. Where an act of the legislature gives to individuals a corporate capacity, upon the performance of certain acts, a person contracting with these individuals, by their corporate name, is precluded from denying the performance of those acts which were necessary to give them a corporate existence. Hamtramck vs. Bank of Edwardsville, 2 Missouri Rep., 137. A fine imposed on an individual by a corporation, for exhibiting a caravan of animals within the limits of the corporation, before any ordinance existed on that subject, is, in its nature, a judicial sentence, and is illegal. Sellick vs. Town of Fayette, 3 Missouri Rep., 73.

SEC. 5. When the corporate powers of any corporation are directed by its charter to be exercised by any particular body or number of persons, a majority of such body or persons, if it be not otherwise provided in the charter, shall be a sufficient number to form a board for the transaction of business; and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

What shall form a board to transact business.

SEC. 6. If any corporation hereafter created by the legislature shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease.

Corporate powers to cease, when.

SEC. 7. The charter of every corporation that shall hereafter be granted by law, shall be subject to alteration, suspension or repeal, by any succeeding legislature: *Provided*, such alteration, suspension, or repeal, shall in nowise conflict with any right vested in such corporation by its charter.

Every charter subject to repeal.

SEC. 8. Parol contracts may be binding upon aggregate corporations if made by an agent duly authorized by a corporate vote, or under the general regulations of the corporations; and contracts may be implied, on the part of such corporations, from their corporate acts, or those of an agent whose powers are of a general character.

Parol contracts binding, when.

SEC. 9. The first meeting of all corporations shall, unless otherwise provided for in their acts of incorporation, be called by a notice signed by some one or more of the persons named in the act of incorporation, and setting forth the time, place and purposes of the meeting; and such notice shall, ten days at least before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation may be established, or if there be no such newspaper, then in the nearest newspaper.

First meeting of corporation, how called.

SEC. 10. Whenever, for want of sufficient by-laws for the purpose, or of officers duly authorized, or from the neglect or refusal of such officers, or from other legal impediment, a legal meeting of any corporation cannot otherwise be called, any justice of the peace of the county where it is desirable to hold such meeting, or where such corporation is established, if it be local, may, on a written application of two or more members thereof, issue a warrant to either of said members, directing him to call a meeting of the corporation by giving such notice as is required in the preceding section.

When justice shall issue a warrant directing the call of a meeting of the corporation.

SEC. 11. Whenever any meeting of any corporation shall be called by a warrant from a justice of the peace, the person to whom such warrant is directed may call the meeting to order and

Meeting, how called.

preside therein until a presiding officer is chosen and qualified, if there be no officer present whose duty it may be to preside.

When the acts of a meeting shall be valid.

SEC. 12. When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written consent thereto on the record of such meeting, the acts of such meeting shall be as valid as if legally called and notified.

Individual property liable to be taken on execution.

SEC. 13. In all incorporations hereafter created by the legislative assembly, unless otherwise specified in their charter, in case of deficiency of corporate property or estate liable to execution, the individual property, rights and credits of any member of the copartnership, or body politic, having a share or shares therein, shall be liable to be taken on execution, to double the amount of his stock, and no more, for all debts of the corporation contracted during his ownership of such stock; and such liability shall continue, notwithstanding subsequent transfer of such stock, for the term of one year after the record of the transfer thereof on the books of the corporation, and for the term of six months after judgment recovered against such corporation in any suit commenced within the year aforesaid: *Provided*, that, in every such case, the officer holding the execution shall first ascertain and certify upon such execution, that he cannot find corporate property or estate.

Proviso.

Officer to levy upon property of stockholders; to give notice.

SEC. 14. In such case, the officer may cause the property of such stockholder to be levied upon by execution in the same manner as if the same were against him individually, after giving him forty-eight hours' previous notice of his intention, and the amount of the debt or deficiency, if he reside within the county, or, if not within the county, to his agent, if he have any within the county, otherwise to the clerk, or cashier, or some other officer of the corporation, unless such stockholder, his agent, or the clerk, or other officer, on demand and notice as aforesaid, shall disclose and show to the executioner, creditor, or the said officer, corporate property or estate, subject to execution, sufficient to satisfy said execution and all fees.

Creditor may sue stockholders jointly or severally.

SEC. 15. Such creditor, after demand and notice, as mentioned in the preceding section, at his election, may have an action on the case against any such stockholder or stockholders on whom such demand and notice may have been served, jointly or severally, or so many of them as he may elect, to recover of him or them individually the amount of his execution and costs, or of the deficiency, as aforesaid, not exceeding the amount of the stock held by such stockholder or stockholders.

Clerk to furnish officer with names.

SEC. 16. The clerk or other officer having charge of the books of any corporation, on demand of any officer holding any execution against the same, shall furnish the officer with the names, places of residence (so far as to him known), and the amount of liability of every person liable as aforesaid.

Corporation may sue members, &c.

Sec. 17. That all bodies corporate, by any suit at law in any court of this territory, may sue for, recover, and receive from their respective members all arrears or other debts, dues and demands which now are, or hereafter may be, owing to them, in the like mode, manner and form, as they might sue for, recover and receive the same from any indifferent person who might not be one of their body, any law, usage or custom to the contrary thereof notwithstanding.

Annual notice to be given, &c.

Sec. 18. Every corporation hereafter created shall give notice annually in some newspaper printed in the county where the corporation is established, and in case no paper is printed therein, then in the nearest paper, of the amount of all the existing debts of the corporation, which notice shall be signed by the president and a majority of the directors; and if any of the said corporation shall fail to do so, all the stockholders of the corporation shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such notice shall be given.

Directors paying dividends when corporation is insolvent, liable for all debts, &c.

Sec. 19. If the directors of any corporation hereafter created shall declare and pay any dividend where the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office: *Provided*, that the amount for which they shall be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection in writing with the clerk or other officer of the corporation having charge of the books, they shall be excepted from said liability.

Proviso.

Debts of corporation not to exceed amount of capital.

Sec. 20. The whole amount of the debts of any corporation hereafter created, (except banking corporations,) which shall not exceed the amount of its capital stock actually paid in, and, in case of any excess, the directors under whose administration it shall happen shall be jointly and severally liable, to the extent of such excess, for all the debts of the company then existing, and for all that shall be contracted so long as they shall respectively continue in office, and until the debts shall be reduced to the said amount of the capital stock: *Provided*, that any of the directors who shall be absent at the time of contracting any debt contrary to the foregoing provisions, or shall object thereto, may exempt

Directors liable for excess.

Proviso.

themselves from the said liability by forthwith giving notice of the fact to the stockholders, at a meeting they may call for that purpose.

Not to extend to literary or benevolent societies.

SEC. 21. None of the provisions of this article, imposing liabilities on the stockholders and directors of corporations, shall extend to literary or benevolent institutions.

Corporations of States, &c., liable to be sued, how.

SEC. 22. Any corporation incorporated by any state or country, and having property in this territory, shall be liable to be sued, and the property of the same shall be subject to attachment in the same manner as individual residents of any state or other country, and, having property, may be liable to be sued and their property subject to be attached.

Corporations may convey land by deed, how.

SEC. 23. That it shall be lawful for any corporation to convey lands by deed, sealed with the common seal of said corporation, and signed by the president or presiding member or trustee of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the form which is, or may be, prescribed for the conveyance for land, shall be recorded in the proper office of the county where the land lies in like manner with other deeds.

On the dissolution, president, directors, &c., to be trustees.

SEC. 24. Upon the dissolution of any corporation already created, or which may hereafter be created by the laws of this territory, the president and directors or managers of the said corporation, at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them; to sue for and recover such debts and property by the name of the trustees of such corporation, describing it by its corporate name, and may be sued by the same. (b)

Powers and duties.

Members of municipal corporations competent witnesses.

SEC. 25. In all cases in which any county, city, town, district or township, or any school district, shall be, in their corporate capacity, parties to, or interested in, any suit, whether of a civil or criminal nature, any member of such corporation may be admitted as a competent witness to testify on the trial or to give his deposition: *Provided*, there be no sufficient objection to his competency except that of his being such member of the corporation.

Proviso.

(b) Legal proceedings, regularly commenced against a corporation, are not affected by the expiration of the charter before the determination of such proceedings. Lindell vs. Benton, *et al.*, 6 Missouri Rep., 361.

ARTICLE II.

Of the mode of procedure against corporations.

§ 1. Actions against corporations, how instituted.
2. Summons issued against incorporated company may be served on president, &c.
3. Officer to express in his return on whom he executed the summons, &c.
4. Suits shall be commenced, where.
5. Notices, &c., how served.
6. Summons returned, not served, court to order appearance to be entered, when.
7. Copy of order to be published, when, how and where.
8. Execution to be a *fieri facias.*
9. Return of *nulla bona* on *fieri facias.* Proceedings. Attachment.
10. Attachment shall be executed by summoning, &c.
11. Moneys, &c., of corporation bound from the issuing of the attachment until the judgment is satisfied.
12. Proceedings against garnishees, how conducted.
13. For what garnishees shall have credit.
14. Other writs of attachment may issue, when.
15. Moneys in hands of officer to be paid to corporation, when.
16. This act not to extend to municipal corporations.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Actions against corporations, how instituted.

SECTION 1. In all actions which may be instituted in law or equity against any corporation or incorporated company, it shall be sufficient to issue a summons commanding the corporation, by their corporate name, to appear and answer the action or bill, which summons shall be returnable in like manner, and subject to the same rules and regulations, as the like process in case of individuals. (*c*)

Summons issued against corporate company, may be served on president, &c.

SEC. 2. When any such summons shall be issued against any banking or other incorporated company, service on the president, or other chief officer; or, in his absence, on the cashier or chief clerk, treasurer or secretary; or, in the absence or want of these officers, then on any director or manager of such company; or, in case there be no such officers, then on the last president or other chief officer; or, in his absence, on the last cashier or chief clerk, treasurer or secretary; or, in want or the absence of those officers, then on any of the last directors or managers of such company; such president or other officer being at the time of service within the county in which he usually resides or the banking-house or office of such corporation is situate, shall be deemed sufficient service of such summons.

Officer to express in his return on whom he executed the summons, &c.

SEC. 3. On the return of such summons, served as aforesaid, the officer serving the same shall express in his return, distinctly,

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(c) In a suit against the mayor, aldermen, &c., of the city of St. Louis, on treasury warrants of that city, the plaintiff should allege in his declaration a demand on the city treasurer, and not on the defendants. Ferguson vs. Mayor, &c., of St. Louis, 6 Missouri Rep., 499. See Lindell vs. Wash, 3 Missouri Rep., 358. The statute of set-off is not restricted to natural persons, but extends to corporations, and the right of set-off exists in suits by corporations before justices of the peace. City of St. Louis vs. Rogers, 7 Missouri Rep., 19.

on whom and when the same hath been executed; and if on any other than the chief officer, he shall express the absence of such officer, or that he cannot be found; and if on any other than the last chief officer, he shall express the absence of such officer, or that he cannot be found, and so to the absence of the cashier or chief clerk, treasurer or secretary. When the service shall be made on any of the last directors or managers, and when the service is on any of the last officers of such company, it shall also express the want or absence of all the existing officers of the company on whom process can be served.

Suits shall be commenced, where.

SEC. 4. Suits against corporations shall be commenced in the proper court of the county wherein the general meetings of the members, or the officers of such corporation have usually been holden, or by law ought to have been holden.

Notices, &c., how served.

SEC. 5. All notices, orders and rules, required to be served in the progress of any cause, shall be served in like manner as a summons.

Summons returned not served, court to order appearance to be entered, when.

SEC. 6. In case the sheriff or other officer shall return any summons not served, and it shall be made to appear to the court that process cannot be served, the court shall make an order directing the defendants to cause their appearance to be entered to said action, on or before the first day of the next term of said court.

Copy of order to be published, when, how and where.

SEC. 7. A copy of such order shall be inserted in some newspaper printed in the territory, for at least six weeks, and the publication of such order, in manner aforesaid, being duly proved, shall have the like effect, and the cause be proceeded in, as in case of a summons duly served.

Execution to be a *fieri facias*.

SEC. 8. The first process upon a judgment against any corporation shall be a *fieri facias*, which the sheriff or other officer shall levy on the moneys, goods and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases.

Return of *nulla bona* on *fieri facias*, proceedings.

SEC. 9. In case the sheriff or other officer shall return upon any such writ of *fieri facias*, that no goods and chattels, lands and tenements, can be found whereon to levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs, it shall be the duty of the court rendering such judgment, on the application of the plaintiff, or his attorney, to issue a writ of attachment against the rights and credits of such corporation, reciting the judgment, execution and return, and directed to the sheriff of the county. (*d*)

Attachment.

(*d*) In a writ of attachment against corporations under this section, it is not necessary to set out the names of the garnishees, neither is it necessary that the sheriff should state, in his return, that he was directed to summon such garnishees. Lindell vs. Benton, *et. al.*, 6 Missouri Rep., 361.

SEC. 10. Such attachment shall be executed by summoning, as garnishee, any person having any moneys or effects belonging to such corporation, and any debtor to such corporation, who may be found within his county, to appear before the proper court at the return of the writ, and then and there answer touching any moneys or effects of such corporation in his hands, or any debt he may owe to the same.

Attachment, how executed.

SEC. 11. From the time of making such service, all moneys and effects due and owing, payable or belonging to such corporation, shall be bound until the judgment is satisfied, and no payment made thereafter to such corporation, or other disposition of any debts, moneys or effects, as attached, shall be credited to the garnishee making the same, nor shall the stock owned by such person in such corporation be allowed as a set-off.

Moneys, &c., of corporation bound from the issue of attachment, until the judgment is satisfied.

SEC. 12. Proceedings against garnishees under the provisions of this act shall be the same as against the garnishee summoned in the case of an original attachment; but no judgment shall be rendered against him for any debt to become due at a future day until after the same shall become due.

Proceedings against garnishees, how conducted.

SEC. 13. For all moneys paid by any garnishee under this act, he shall have credit against the corporation to whom it was due.

For what garnishee shall have credit.

SEC. 14. If a sufficient sum be not made to satisfy such judgment and costs, other writs of attachment may be issued, as aforesaid, from time to time, until the whole is satisfied.

Other writs of attachment may issue, when.

SEC. 15. If any moneys remain in the hands of the officer, after satisfying the judgment and all costs, he shall pay the same to the corporation or its order.

Moneys in hands of officer to be paid to corporation, when.

SEC. 16. Nothing contained in this article shall be construed to extend to any county or township, or to any public university, academy, seminary, or school, incorporated by the laws of this territory.

This act not to extend to municipal corporations.

This act to take effect and be in force from and after its passage.

CHAPTER 29.

COSTS.

An Act concerning costs.

Article I. Of costs in civil cases.
II. Of costs in criminal cases.

ARTICLE I.

Of costs in civil cases.

§ 1. Security for costs, in what cases required before action commenced.
2. In what cases security to be given after suit commenced; on failure, court to dismiss suit, &c.
3. Appellee not required to give security, when.
4. Plaintiff may sue as a pauper, when; counsel to be assigned him by the court.
5. When clerk shall issue writ without fees for the same.
6. Costs, who shall recover in civil actions.
7. Costs on motions.
8. Costs, when given in the discretion of the court.
9. When one of several counts in a declaration bad, costs how awarded.
10. In case of several defendants, judgment in favor of one or more, costs how recovered.
11. In actions *ex delicto*, damages claimed to determine jurisdiction of court.
12. If plaintiff recovers amount below the jurisdiction of the court, judgment for costs to be rendered against him.
13. In cases of *certiorari*, successful party to recover costs.
14. In appeals from probate courts or justices' courts, costs how adjudged *against* appellant.
15. Costs, how adjudged in *favor* of appellant.
§ 16. Appeal not prosecuted, judgment to be affirmed, &c.
17. In appeals or writs of error from district courts, costs how adjudged.
18. Costs in equity, how adjudged.
19. In suits no contracts made with territory, &c., costs how adjudged.
20. General judgment for costs against the territory not to be given, &c.
21. Person to whose use action is brought, liable to pay costs; judgment for costs in such cases, effect of.
22. Costs in petition for partition, how regulated and adjudged.
23. When tender is make before suit, plaintiff not to recover costs.
24. Tender in court after suit brought, when plaintiff shall pay all costs from the time of such tender.
25. Duty of clerk in taxing bills of costs.
26. Re-taxation of costs, when made; effect thereof.
27. Supreme court to re-tax costs, when.
28. Costs of re-taxation to be paid by clerk.
29. Clerks of inferior courts, in appeals or writs of error, shall append to transcript to supreme court, a concise index, &c.; failure of clerk of supreme court to make out record; his fees therefor.
30. Construction of foregoing section.
31. Fee bills and executions for costs, when to be issued.
32. Judgment for costs and damages to be rendered against attorney, when.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Security for costs, in what cases required before action commenced.

Section 1. In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators, or guardians, *qui tam* actions, actions on penal statutes when the penalty is given to the informer, and in all cases in law or equity where the plaintiff, or person for whose use the action is to be commenced, shall not be a resident of this territory, the plaintiff, or person for whose use the action is to be commenced, shall, before he institutes such suit, file with the clerk of the court in which the action is to be commenced, the written undertaking of some person being a resident of this territory, whereby he shall acknowledge himself bound to pay all costs which may accrue in such action; and if any such action shall be commenced without filing such undertaking, the court, on motion, may dismiss the same, unless such undertaking be filed before the motion is determined, and the attorney of the plaintiff shall be ruled to pay all costs accruing thereon. (*a*)

In what cases security to be given after suit commenced.

Sec. 2. If, at any time after the commencement of any suit by a resident of this territory, he shall become non-resident, or in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, the court shall, on motion of the defendant, or any officer of the court, rule the plaintiff, on or before a day in such rule named, to give security for the payment of the costs in such suit; and if such plaintiff shall fail, on or before the day in such rule named, to file the undertaking of some responsible person, being a resident of this territory, whereby he shall bind himself to pay all costs which have accrued or may accrue in such action, the court may, on motion, dismiss the suit, unless such undertaking shall be filed before the motion is determined. (*b*)

On failure, court to dismiss suit, &c.

Appellee not required to give security, when.

Sec. 3. On an appeal from a justice of the peace to the circuit court, if the plaintiff be appellee, he shall not be required to give security for costs.

Plaintiff may sue as a poor person, when.

Sec. 4. If any court shall, before or after the commencement of any suit pending before it, be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay the costs and expenses thereof, such court may, in its discretion, permit him or her to commence and prosecute his or her action, as a poor person; and thereupon such poor person shall have all necessary process and proceedings, as in other cases, without fees, tax, or charges; and the court may assign to such person counsel, who, as well as all other officers of the court, shall per-

Counsel to be assigned him by the court.

(*a*) *First.* This section does not apply to suits commenced in a justices' court; McCurdy vs Gibson and Brown; 8 Missouri Rep., 549.

Second. A bond to the defendant, and to the several officers, and to all others interested, for the payment of all costs which may be awarded to be paid, is good and sufficient under this section; Braggs vs. Lanning and others; 1 Missouri Rep., 261.

(*b*) A judgment will not be reversed because a motion to rule the party to give security for costs remained undecided; Morgan vs. Taggart; 1 Missouri Rep., 403.

form their duties in such suit without fee or reward; but if judgment is entered for the plaintiff, costs shall be recovered, which shall be collected for the use of the officers of the court.

When clerk shall issue writ without fees for the same.

Sec. 5. If any person file before any clerk, in vacation, an affidavit, that he has a just and subsisting cause of action, on which he proposes to bring a suit, and that he is unable to pay the costs, the clerk shall issue an original writ, without fees, for the same. But the court may, in its discretion, refuse or permit the further prosecution of the suit.

Costs, who shall recover.

Sec. 6. In all civil actions, or proceedings of any kind, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law. (c)

Costs, on motions.

Sec. 7. On all motions, the court may give or refuse costs, at its discretion, unless where it is otherwise provided by law.

Costs, when given in the discretion of court.

Sec. 8. When any defendant in any action shall plead several matters, any whereof shall, upon demurrer joined, be adjudged insufficient, or if a verdict shall be found on any issue in the case for the plaintiff, costs shall be given at the discretion of the court.

When one of several counts bad, costs how awarded.

Sec. 9. Where there are several counts in any declaration, and any one of them be adjudged insufficient, or a verdict, on any issue joined thereon, shall be found for the defendant, costs shall be awarded at the discretion of the court.

In case of several defendants, costs how recovered.

Sec. 10. Where several persons are made defendants to any action, and any one or more of them shall have judgment in his favor, every person so having judgment shall recover his costs in like manner as if such judgment had been entered in favor of all the defendants, unless it shall appear to the court that there was reasonable cause for making such person defendant to such action.

Damages to determine the jurisdiction of the court, when.

Sec. 11. In all actions *ex delicto*, the damages claimed in the declaration shall determine the jurisdiction of the court, and if the plaintiff recover any damages, he shall recover his costs.

If plaintiff recovers amount below the jurisdiction of court, judgment for costs to be rendered against him.

Sec. 12. In all actions of debt, covenant and assumpsit, and all other actions founded on contract, if the plaintiff recover an amount which, exclusive of interest, is below the jurisdiction of the court, unless the plaintiff's claim, as established on the trial, shall be reduced, by set-offs, to an amount below the jurisdiction of the court, he shall recover judgment therein; but the costs shall be adjudged against him.

In *certiorari*, suc-

Sec. 13. In all cases where either party shall sue out a *cer-*

(c) On a plea of release, pleaded *puis darrein* continuance, costs should be awarded to the plaintiff to the time of filing; to the defendant, after that time; Nettles vs. Sweazea and others, 2 Missouri Rep., 100.

tiorari upon any judgment where the same shall be allowed by law, the successful party in the superior court shall recover costs in both courts.

cessful party re recover costs.

Sec. 14. When an appeal shall be taken from a judgment of a probate court, or other inferior tribunal, against the appellant, the costs shall be adjudged in the following cases, as follows: *First.* If the judgment be affirmed, or the appellee, in a trial *de novo*, shall recover as much, or more, than the amount of the judgment below, the appellant shall pay costs in both courts. *Second.* If the judgment be reversed, and the judgment of the appellate court be in favor of the appellant, the appellee, shall pay costs in both courts. *Third.* If the appellant shall, at any time before his appeal is perfected, tender and offer to pay to the appellee any portion of the judgment, which shall not be accepted in satisfaction, and the appellee shall not, in the appellate court, recover more than the amount so tendered and refused, he shall pay costs in the appellate court. *Fourth.* If no such tender shall have been made, and the appellee recover any sum in the appellate court, or if, after such tender and refusal, the appellee shall recover more than the amount tendered, the appellant shall pay costs in both courts.

In appeals from probate courts, or other courts, costs how adjudged against appellant.

Sec. 15. If such appeal shall be from a judgment in favor of the appellant, costs shall be adjudged in the following cases, as follows: *First.* If the judgment appealed from shall be affirmed, or, upon a trial *de novo*, the appellant shall not recover more than the judgment below, he shall pay the costs of the appellate court. *Second.* If, on the appeal, the appellant recover nothing, or the judgment be against him, he shall pay costs in both courts. *Third.* If the appellant recover more than the judgment below, he shall recover costs in both courts.

Costs, how adjudged in favor appellant.

Sec. 16. In all cases when an appeal from a judgment of the inferior court, or a justice of the peace, shall not be prosecuted by the appellant according to law, the judgment shall be affirmed, and the costs adjudged accordingly.

Appeal not prosecuted, judgment to be affirmed, &c.

Sec. 17. If any person shall sue out a writ of error on, or take an appeal from, a judgment of a district or other court, in an action at law, and the judgment shall be affirmed, or the writ of error or appeal discontinued or quashed, or the plaintiff in error or appellant nonsuited, the defendant in error or appellee shall recover his costs; and if the judgment be reversed, the appellant or plaintiff in error shall recover his costs.

In appeals or writs of error from court, costs how adjudged.

Sec. 18. Upon the complainant dismissing his bill in equity, or defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant his costs; and in

Costs in equity, how adjudged.

all other cases in equity, it shall be in the discretion of the court to award costs or not, except in those cases in which a different provision is made by law.

In suits on all contracts made with the territory, &c., costs how adjudged.

SEC. 19. In suits upon obligations, bonds, or other specialties, or on contracts express or implied, made to or with the territory, or the governor thereof, or any other person to the use of the territory, or to a county or the use of a county, and not brought on the relation, or in behalf, or for the use of any private person, if the plaintiff shall recover any debt or damages, costs shall also be recovered as in other cases; but if such plaintiff suffer a discontinuance, or be non-suited, or *non prossed*, or if a verdict shall be found in favor of the defendant, he shall recover his costs.

General judgment against the territory, &c., not to be given.

SEC. 20. In all such cases, the judgment against the territory or county shall not be for costs generally, but the amount thereof shall be expressed in the judgment, and no such judgment shall afterwards be amended so as to increase the amount for which it was originally entered; and upon a transcript of such judgment, together with a certified copy of the fee-bill, showing the items of cost, being presented to the auditor of public accounts, or the tribunal transacting county business, the same shall be audited and allowed.

Person to whose use action is brought, liable to pay costs.

SEC. 21. When any suit or proceeding instituted in the name of the territory or any county, on the relation, or in behalf, or for the use of any private person, and where a suit shall be commenced in the name of one person to the use of another, the person for whose use the action is brought shall be held liable to the payment of all costs. And in all such cases, as well when there is security for costs, or where the attorney is liable for the same, judgment for the costs shall be rendered against the person for whose use the action is brought, the security, or attorney, in like manner and to the same extent as if the suit or proceeding had been instituted in his own name.

Judgment for costs in such cases, effect of.

Costs in petition for partition, how adjudged and regulated.

SEC. 22. In all cases founded on the statute concerning the partition of land, the petitioner or petitioners shall pay all costs in the first instance, but shall be entitled to judgment against each of the parties interested in the partition, for such part of the whole costs attending the proceeding as shall be proportionate to the amount of his interest, unless the lands shall have been sold in order to make partition, in which case the court shall apportion the costs among the several parties, and cause the same to be paid out of the money arising from such sale, or a fee-bill may issue for the collection of the costs.

When tender is

SEC. 23. That in all actions where, before suit brought, made, plaintiff not to recover costs.

tender shall be made and full payment offered, by discount or otherwise, in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterwards will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit, but the defendant shall recover costs as if judgment in the cause had gone in his favor upon the merits.

Tender in court after suit brought, when plaintiff shall pay all costs from the time of such tender.

SEC. 24. That if, in any suit pending, the defendant shall at any time bring into court, and deposit with the clerk, for the use of the plaintiff, the amount of the debt or damages he admits to be due, together with all costs that have then accrued, and the plaintiff shall refuse to accept the same in discharge of his suit, and shall not afterwards recover a larger sum than the sum so brought into court, exclusive of interest and costs, he shall pay all costs that may accrue from and after the time such money was so brought in and deposited as aforesaid.

Duty of clerk in taxing bills of costs.

SEC. 25. The clerk shall tax and subscribe all bills of costs arising in any cause or proceedings instituted or adjudged in the court of which he is the clerk, agreeably to fees which shall for the time being be allowed by law, and shall in no case allow any item or charge, unless the service for which it was made was actually performed in the cause.

Re-taxation of costs, when made.

Effect thereof.

SEC. 26. Any person aggrieved by the taxation of a bill of costs, may, upon application, have the same re-taxed by the court in which the action or proceeding was had, and in such re-taxation all errors shall be corrected by the court ; and if the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall pay the costs of re-taxation, and also, to the party aggrieved, the amount which he may have paid by reason of the allowing of such unlawful charge.

Supreme court to re-tax costs, when.

SEC. 27. In all cases of appeal and writs of error in the supreme court, it shall be the duty of that court, whenever the the transcript of a record shall contain any unnecessary matter had before the inferior court, to re-tax the bill of costs of the clerk of the inferior court, although no motion for that purpose is made by either party; and when the fees for such unnecessary matter, contained in the transcript of the record, shall have been paid to the clerk of the inferior court, the supreme court shall order the same to be refunded, which order may be enforced by attachment.

Costs of re-taxation to be paid by clerk.

SEC. 28. Costs attending the correction of every bill of costs, and enforcing the order to refund, as provided in the preceding section, shall be paid by the clerk improperly charging fees.

Clerks of inferior courts in appeals

SEC. 29. The clerk of the inferior court shall append to the or writs of error, shall append to transcript to supreme court a concise index, &c.

transcript of the record for the supreme court, on appeals and writs of error, a concise index, referring, by number, to the pages on which are contained the proceedings preparatory to the commencement of the suit, the declaration or bill, writ, amended declaration or bill, the pleadings and the action of the court thereon, all motions and the action of the court thereon, and the exceptions thereto, the default of either party, and the judgment or decree thereon, writ of enquiry, verdict, final judgment, bill of exceptions, evidence of each witness, and all the subsequent steps in the cause: and the proceedings shall be stated in the transcript in the order in which they transpired in court; and if any record be made out otherwise, or in a manner not legible, it shall be the duty of the supreme court, although no motion for that purpose be made, to direct their clerk to make out a proper record, if practicable, from the transcript certified by the clerk from below, and the clerk of the supreme court shall receive, as a compensation for his services herein, the fees allowed by law to the clerk of the inferior court for the transcript, who shall not be entitled to any fee therefor; and if he has received the same, the court shall order him to pay it to the clerk of the supreme court, and may enforce such order by attachment.

Failure, clerk of supreme court to make out record.

His fees therefor.

Construction of foregoing section.

Sec. 30. Nothing contained in the foregoing section, shall be construed to require the insertion of any matter, in the transcript of the record of a cause, which is not necessary for its proper determination in the supreme court.

Fee-bills and executions for costs, when to be issued.

Sec. 31. In all cases where either party shall be adjudged to pay costs before final judgment, the party in whose favor such costs are adjudged shall have a fee-bill therefor; and for costs awarded upon final judgment execution may be issued.

Judgment for costs and damages to be rendered against attorney, when.

Sec. 32. If an attorney or counsellor at law shall commence any action and fail to prosecute the same, or if any action so commenced shall be dismissed for want of his attention, or if he shall bring the action wrong and it be necessary to enter a nonsuit, or if it shall be made to appear to the court that the action was erroneously brought, dismissed, or non-suit entered in consequence, the court shall enter up judgment against any such attorney or counsellor at law, for the full amount of the costs thereby incurred, and all damages in consequence thereof.

ARTICLE II.

Of costs in criminal cases.

§ 1. What costs in capital cases shall be paid by the territory.

2. In what cases costs shall be paid by county.

3. In capital cases, in case of acquittal, territory to pay costs. In all other cases of acquittal, costs to be paid by county.

4. Informer or prosecutor to pay costs, when.

5. If public officer prosecutes, when costs to be paid by county.

6. Prosecutors in misdemeanors liable for costs unless grand jury determine that county shall pay.

7. If a person charged with an offence is discharged by officer, prosecutor to pay costs, unless, &c. Officer to issue execution, when. Proceedings, when certified to probate court.

8. Costs not to be taxed against territory or county.

9. If a person charged with felony is discharged by examining officer, or is committed, &c., costs to be paid by territory, when.

10. In certain cases, jury to determine whether prosecutor or county to pay costs.

11. No fees except for board, &c., shall be paid by territory or county on conviction.

§ 12. Convicted slave shall be sold to pay costs, unless, &c.

13. Officer how to proceed in selling slave. Proceeds, how applied.

14. When slave is reprieved, &c., shall be sold to satisfy costs.

15. When convicted and executed, territory to pay costs.

16. Subpoenas in criminal cases, how and when issued. Duty of clerk.

17. Witness recognized or subpoenaed, shall attend till discharged.

18. Court to make allowance for ironing prisoner, when.

19. Fines, penalties and forfeitures incurred in any county, shall be paid into the treasury thereof, for the benefit of said county.

20. Clerk to deliver fee-bills to circuit attorney, when. Failing to perform such duty, treble the amount of costs to be recovered against him.

21. Duty of judge and circuit attorney to examine fee-bills. Shall certify to auditor or county court.

22. Original fee-bill to be preserved by clerk.

23. Costs not to be taxed against territory or county for more than three witnesses to one fact.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

What costs in capital cases shall be paid by the territory.

Section 1. The costs shall be paid by the territory in all capital cases in which the defendant shall be convicted, and shall be unable to pay them; and in all cases in which the defendant shall be sentenced to imprisonment, and shall be unable to pay them.

In what cases costs shall be paid by county.

Sec. 2. The county in which the indictment is found shall pay the costs in all cases when the defendant is sentenced to imprisonment in the county jail and fine, or to either of these modes of punishment, and is unable to pay them.

In capital cases, &c., in cases of acquittal, territory to pay costs.

In all other cases of acquittal, costs to be paid by county.

Sec. 3. In all capital cases, and those in which imprisonment is the sole punishment for the offence, if the defendant is acquitted, the costs shall be paid by the territory; and in all other trials on indictments, if the defendant is acquitted, the costs shall be paid by the county, unless in those in which the prosecutor shall be adjudged to pay them.

Informer or prosecutor to pay costs, when.

SEC. 4. In all prosecutions for any fine, penalty, or forfeiture, instituted otherwise than by indictment, unless the same is commenced by the attorney general, or district attorney, or some other officer whose duty it is to institute the same, the informer, or person commencing the prosecution, although he may not be entitled to any part of the said fine, penalty, or forfeiture, shall be adjudged to pay all costs, if the defendant is acquitted.

If public officer prosecutes, when to be paid by county.

SEC. 5. If such prosecutions are commenced by a public officer whose duty it is to institute the same, if the defendant is acquitted, or is convicted and unable to pay the costs, the same shall be paid by the county.

Prosecutors in misdemeanors liable for costs, unless grand jury determine, &c.

SEC. 6. In all cases, except a felony, where any person shall be committed, or recognized to answer a criminal offence, and no indictment shall be found against such person, the prosecutor shall be liable for the costs, unless the grand jury taking the matter in consideration shall determine that the county and not the prosecutor shall pay the same; and the opinion of a majority of the grand jury, certified by the foreman, stating who shall be liable for costs, shall be conclusive on the court in rendering judgment for the same.

If person charged be discharged by officer, prosecutor to pay costs, unless, &c.

SEC. 7. If a person charged with an offence less than a felony shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor, or person on whose oath or information the same shall have been instituted, unless the officer shall certify that there was probable cause for the prosecution, in which event they shall be paid by the county in which the offence was committed. When the prosecutor is condemned to pay the costs, the officer taking the examination shall issue execution for them forthwith, if demanded. When the bill of costs shall be certified to the tribunal transacting county business for payment, the same shall be strictly examined by the tribunal, and no allowance shall be made but for such services as are expressly compensated by law.

Execution to be issued, when.

Proceedings when certified to tribunal.

Costs not to be taxed against territory or county, when.

SEC. 8. In all prosecutions instituted otherwise than by indictment, if the offender is convicted and unable to pay the costs, the same shall not be taxed against the territory or county.

Person charged with felony discharged by examining officer, or committed, &c., costs to be paid by territory, when.

SEC. 9. If a person charged with a felony shall be discharged by the officer taking his examination, or, if recognized or committed for any such offence, and no indictment be preferred against him, the costs shall be paid by the territory, which shall be certified for allowance in the manner hereinafter declared.

In certain cases, jury to determine whether prosecutor or county shall pay costs.

SEC. 10. If, upon the trial of an indictment, whereon the name of a prosecutor is endorsed as such, according to law, the jury shall acquit the defendant, they shall determine and return, together with their verdict, whether the prosecutor or the county shall pay the costs, and the court shall render judgment accordingly.

No fees, except for board, paid by territory, &c., on conviction.

Sec. 11. Whenever any person shall be convicted of any crime or misdemeanor, no costs incurred on his part, except fees for board, shall be paid by the territory or county.

Convicted slave shall be sold to pay costs, unless, &c.

Sec. 12. If a slave shall be convicted of any offence in a case where, if the convict was a free person he would be liable to pay costs, such slave shall be sold to satisfy such costs, unless the master or owner appear and pay the same within sixty days after they become due. (*d*)

Officer, how to proceed in selling slave.

Sec. 13. The sheriff or officer having the custody of such slave shall detain him, and if the costs be not paid within the time specified shall proceed to sell such slave, on the same notice, in the same manner, as near as may be, as on sales of personal property under execution, and the proceeds shall be applied, first, to the payment of costs and expenses of sale, and the balance paid to the owner on demand.

Proceeds, how applied.

When slave reprieved, &c., shall be sold to satisfy costs.

Sec. 14. Any slave convicted of a capital offence, who shall be reprieved or pardoned by the executive, shall be sold to satisfy he costs, unless the owner or master appear and pay the same within the time prescribed in the second preceding section.

Convicted and executed, territory to pay costs.

Sec. 15. If a slave be convicted of any capital offence and executed, the costs shall be paid by the territory.

Subpœnas in criminal cases, how and when issued.

Sec. 16. No subpœna for a witness in any criminal case shall be issued unless the name of such witness is endorsed on the indictment, or the prosecuting attorney, or the prosecutor in the cause, or the defendant or his attorney, shall order the same; and no subpœna shall be issued for any witness unless the accused is in custody, or on bail, or unless the clerk shall be satisfied that he will be in attendance on the court at the return term of the process; and all costs unnecessarily incurred by a violation of this provision shall be taxed against the clerk.

Duty of clerk.

Witness recognized or subpœnaed, shall attend until discharged.

Sec. 17. Whenever a witness in a criminal case is once recognized or subpœnaed, he shall attend under the same until he is discharged by the court, and no costs shall be allowed for any subsequent recognizance or subpœna against the same witness.

To make allowance for ironing prisoner, when.

Sec. 18. Whenever the tribunal transacting county business of any county in which the offender shall have committed any crime for which he is imprisoned, may be satisfied of the necessity of so doing, they may make an allowance for ironing the pris-

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(*d*) The words "owner or master," in this section, are synonymous, and mean the owner and not the temporary master of the slave. Reed vs. Circuit Court of Howard county, 6 Missouri Rep., 44.

oner, and may allow a moderate compensation for medical services, fuel, bedding and menial attendance for any prisoner, which shall be paid out of the county treasury.

Fines, penalties, &c., to be paid for benefit of county.

Sec. 19. All fines and penalties imposed, and all forfeitures incurred, in any county, shall be paid into the treasury thereof, for the benefit of said county.

Clerk to deliver fee-bills to prosecuting attorney, when.

Sec. 20. The clerks of the several courts in this territory, in which any criminal cause shall have been determined, or continued generally, and in which the territory or county shall be liable for the costs, shall, before the next term succeeding that during which the cause shall have been determined or continued, tax all costs which shall have accrued in the same, and make out and deliver to the prosecuting attorney of said court, within the time aforesaid, a complete fee-bill, specifying each item of service and the fee therefor; and if any clerk fail to perform the duties hereby enjoined on him, any person injured by such neglect may, by motion in the said court, giving two days' notice thereof, which may be served on the clerk or his deputy, recover against the clerk treble the amount of costs to which he is entitled in the cause in which the clerk shall have failed to make out and deliver to the prosecuting attorney a fee-bill.

Failing to perform such duty, treble the amount of costs to be recovered against him.

Duty of judge and prosecuting attorney to examine fee-bills.

Sec. 21. It shall be the duty of the judge and prosecuting attorney of every court in this territory having criminal jurisdiction, to meet together in term time, and examine strictly each bill of costs which shall have been delivered to the prosecuting attorney of said court, for allowance against the territory or county, and ascertain, as far as practicable, whether the services have been rendered for which charges are made, and whether compensation is expressly given by law for the services charged, or whether greater charges are made than the law authorizes; and if they shall find that the said fee-bill has been made out in conformity to law, and if not, after correcting all errors therein, they shall certify to the auditor of public accounts, or clerk of the tribunal transacting county business, accordingly as the territory or county is liable, the amount of costs due by the territory or county on the said fee-bill, which shall be delivered to the clerk to be collected without delay, and paid over to those entitled to the fees allowed. And any clerk failing to collect said fees, or having collected them and shall refuse to pay the same on demand, shall be subject to the penalties prescribed in the preceding section, to be recovered in like manner.

Shall certify to auditor or county tribunal.

Original fee-bill to be preserved by clerk.

Sec. 22. The original fee-bill, signed by the judge and prosecuting attorney, a copy of which shall be certified to the auditor of public accounts, or tribunal transacting county business, shall be carefully preserved by the clerk, in his office, and shall be evidence of the facts therein contained, without further proof.

Costs not to be taxed against territory or county for more than three witnesses, when.

Sec. 23. The judge and prosecuting attorney shall be careful and not tax the territory or any county with more than the costs of three witnesses, to establish any one fact.

This act to take effect and be in force from and after its passage.

CHAPTER 30.

COUNTIES.

An Act defining the boundaries of the several counties of the territory of Kansas.

§ 1. Johnson.
2. Lykins.
3. Linn.
4. Bourbon.
5. McGee.
6. Douglas.
7. Franklin.
8. Anderson.
9. Allen.
10. Dorn.
11. Shawnee.
12. Weller.
13. Coffey.
14. Woodson.
15. Wilson.
16. Richardson.
17. Breckenridge.
18. Madison.
19. Greenwood.
20. Godfroy.
§ 21. Davis.
22. Wise.
23. Butler.
24. Hunter.
25. Doniphan.
26. Atchison.
27. Leavenworth.
28. Browne.
29. Jefferson.
30. Nemaha.
31. Calhoun.
32. Marshall.
33. Riley.
34. Counties to be attached for civil and military purposes.
35. Of seats of justice of counties.
36. Seats of justice to be located; how.
37. Inhabitants; to what counties attached.
38. Boundary lines; how defined.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

County of Johnson.

Section 1. The county of Johnson shall be bounded as follows: Beginning in the main channel of the Kansas (Kaw) river, at the point where said channel crosses the Missouri line; thence south on said Missouri line twenty-six (26) miles; thence west twenty-four (24) miles; thence north to the main channel of the Kansas or Kaw river; thence down said channel to the place of beginning.

Lykins.

Sec. 2. The county of Lykins shall be bounded as follows: Beginning at the south-east corner of Johnson county; thence south twenty-four (24) miles; thence west twenty-four (24) miles; thence north twenty-four (24) miles to the south-west corner of Johnson county; thence east twenty-four (24) miles to the place of beginning.

Linn. SEC. 3. The county of Linn shall be bounded as follows: Beginning at the south-east corner of Lykins county; thence south twenty-four (24) miles; thence west twenty-four (24) miles; thence north twenty-four (24) miles; thence east twenty-four (24) miles to the place of beginning.

Bourbon. SEC. 4. The county of Bourbon shall be bounded as follows: Beginning at the south-east corner of Linn county; thence south thirty (30) miles; thence west twenty-four (24) miles; thence north thirty (30) miles; thence east twenty-four (24) miles to the place of beginning.

+ Changed to Cherokee in 1859 60 but no change of boundaries till 1868 – then made a little broader from East to West –

McGee. + SEC. 5. The county of McGee shall be bounded as follows: Beginning at the south-east corner of Bourbon county; thence south to the southern boundary of this territory; thence west on said boundary twenty-four (24) miles; thence north to a point due west of the place of beginning; thence east twenty-four (24) miles to the place of beginning.

Douglas. SEC. 6. The county of Douglas shall be bounded as follows: Beginning at the main channel of the Kansas river, at the north-west corner of Johnson county; thence south to the south-west corner of said Johnson county; thence west twenty-four (24) miles to a point equi-distant between the limits (embraced in the original plats) of the towns of Lecompton and Tecumseh.

Franklin. SEC. 7. The county of Franklin shall be bounded as follows: Beginning at the south-east corner of Douglas county; thence south twenty-four (24) miles; thence west twenty-four (24) miles; thence east twenty-four (24) miles to the place of beginning.

Anderson. SEC. 8. The county of Anderson shall be bounded as follows: Beginning at the south-east corner of Franklin county; thence south twenty-four (24) miles; thence west twenty-four (24) miles; thence north twenty-four (24) miles; thence east twenty-four (24) miles to the place of beginning.

Allen. SEC. 9. The county of Allen shall be bounded as follows: Beginning at the south-east corner of Anderson county; thence south thirty (30) miles; thence west twenty-four (24) miles; thence north thirty (30) miles; thence east twenty-four (24) miles to the place of beginning.

Dorn. SEC. 10. The county of Dorn shall be bounded as follows: Beginning at the south-east corner of Allen county; thence south to the southern boundary of this territory; thence west twenty-four (24) miles; thence north to a point due west of the south-east corner of said county of Dorn; thence east twenty-four (24) miles to the place of beginning.

SEC. 11. The county of Shawnee shall be bounded as follows: Beginning at the south-east corner of Douglas county; thence west twenty-four (24) miles; thence north to the main channel of the Kaw or Kansas river; thence down said channel to the north-west corner of Douglas county; thence south to the place of beginning. Shawnee.

SEC. 12. The county of Weller shall be bounded as follows: Beginning at the south-east corner of Shawnee county; thence south twenty-four (24) miles; thence west twenty-four (24) miles; thence north twenty-four (24) miles; thence east twenty-four (24) miles to the place of beginning. Weller.

SEC. 13. The county of Coffey shall be bounded as follows: Beginning at the south-east corner of the county of Weller; thence south twenty-four (24) miles; thence west twenty-four (24) miles; thence north twenty-four (24) miles; thence east twenty-four (24) miles to the place of beginning. Coffey.

SEC. 14. The county of Woodson shall be bounded as follows: Beginning at the south-east corner of the county of Coffey; thence south thirty (30) miles; thence west twenty-four (24) miles; thence north thirty (30) miles; thence east twenty-four (24) miles to the place of beginning. Woodson.

SEC. 15. The county of Wilson shall be bounded as follows: Beginning at the south-east corner of the county of Woodson; thence south to the southern boundary of the territory; thence west twenty-four (24) miles; thence north twenty-four (24) miles to a point west of the place of beginning; thence east twenty-four (24) miles to the place of beginning. Wilson.

SEC. 16. The county of Richardson shall be bounded as follows: Beginning at the south-west corner of Shawnee county; thence west twenty-four (24) miles; thence north to the main channel of the Kaw or Kansas river; thence down said channel to the north-west corner of Shawnee county; thence south to the place of beginning. Richardson.

SEC. 17. The county of Breckenridge shall be bounded as follows: Beginning at the south-east corner of Richardson county; thence south twenty-four (24) miles; thence west twenty-four (24) miles; thence north twenty-four (24) miles; thence east twenty-four (24) miles to the place of beginning. Breckenridge.

SEC. 18. The county of Madison shall be bounded as follows: Beginning at the south-east corner of the county of Breckenridge; thence south twenty-four (24) miles; thence west twenty-four Madison.

(24) miles; thence north twenty-four (24) miles; thence east twenty-four (24) miles to the place of beginning.

Greenwood. SEC. 19. The county of Greenwood shall be bounded as follows: Beginning at the south-east corner of the county of Madison; thence south thirty (30) miles; thence west twenty-four (24) miles; thence north thirty (30) miles; thence east twenty-four (24) miles to the place of beginning.

Godfroy. SEC. 20. The county of Godfroy shall be bounded as follows: Beginning at the south-east corner of the county of Greenwood; thence south to the southern boundary of the territory; thence west twenty-four (24) miles; thence north to the south-west corner of Greenwood; thence east twenty-four (24) miles to the place of beginning.

Davis. SEC. 21. The county of Davis shall be bounded as follows: Beginning at the south-west corner of Richardson county; thence west thirty (30) miles; thence north to the main channel of the Smoky Hill Fork of the Kansas river; thence down said channel to the junction of said channel with that of the Republican Fork; thence down the main channel of the Kansas river to the north-west corner of said Richardson county; thence south to the place of beginning.

Wise. SEC. 22. The county of Wise shall be bounded as follows: Beginning at the south-west corner of the county of Davis; thence south thirty (30) miles; thence west thirty (30) miles; thence north thirty (30) miles; thence east thirty (30) miles to the place of beginning.

Butler. SEC. 23. The county of Butler shall be bounded as follows: Beginning at the south-east corner of Wise county; thence south thirty (30) miles; thence west thirty (30) miles; thence north thirty (30) miles; thence east thirty (30) miles to the place of beginning.

Hunter. SEC. 24. The county of Hunter shall be bounded as follows: Beginning at the south-east corner of Butler county; thence south to the southern boundary of the territory; thence west thirty (30) miles; thence north to a point west of the place of beginning; thence east thirty (30) miles to the place of beginning.

Doniphan. SEC. 25. The county of Doniphan shall be bounded as follows: Beginning where the line between Kansas and Nebraska strikes the Missouri river; thence west to the first township line; thence south twenty-four (24) miles; thence east to the range line which runs north and south through the town of Atchison; thence south to the middle of Independence creek; thence down the middle of said creek to the Missouri river; thence up said river in the middle of the main channel thereof to the place of beginning: and Thomas J. B. Cramer, A. Payne, and M. P. Rively are hereby appointed commissioners to locate the seat of justice of said county of Doniphan, within six miles of the geographical centre of said county. Said commissioners shall meet at the house of James R. Whitehead on the first day of October next, or as soon thereafter as practicable, and, after being duly sworn, shall proceed to locate said seat of justice in accordance with the provisions of this act, and make a report of their proceedings to the tribunal transacting county business, which report shall be signed by said commissioners, and shall be filed with the tribunal transacting county business; and such location, when made, shall be the permanent seat of justice of said county.

Sec. 26. That the county of Atchison shall be bounded as follows: Beginning at the south-east corner of the county of Doniphan; thence west twenty-five (25) miles; thence south sixteen (16) miles; thence east to the Mississippi river; thence up said river to the lace of beginning: *Provided*, that in no case shall the southern boundary of Atchison county be run as to include the town of Kickapoo, or any portion thereof, in the county Atchison. Atchison.

Sec. 27. That the county of Leavenworth shall be bounded as follows: Beginning at a point on the southern boundary of Atchison county, due north of a point four miles west of Dawson's crossing of the Fort Riley road on Stranger creek; thence due south to the main channel of Kansas river; thence down said channel to where said channel crosses the channel of the Missouri river; thence up said channel of the Missouri river to the south-east corner of Atchison county; thence along the southern boundary of said Atchison county to the place of beginning. Leavenworth.

Sec. 28. Browne county shall be bounded as follows: Beginning at the south-west corner of Doniphan county; thence west twenty-four (24) miles; thence south thirty (30) miles; thence east to the west line of Atchison county; thence north to the north-west corner of Atchison county; thence east with said north line of Atchison county to the north-west corner of Doniphan county; thence north with said west line of Doniphan county to the beginning. Browne.

Sec. 29. That the county of Jefferson shall be bounded as follows: Beginning at the north-west corner of the county of Leavenworth; thence west to the south-west corner of Atchison county; thence north to the south-east corner of Browne county; thence west along the south line of said county of Browne, opposite a point twenty-two (22) miles west from the western boun- Jefferson.

dary line of the county of Leavenworth; thence south to the main channel of the Kaw or Kansas river; thence down said channel to the south-west corner of the county of Leavenworth; thence north to the place of beginning.

Nemaha.

SEC. 30. That the county of Nemaha shall be bounded as follows: Beginning at the north-west corner of the county of Browne; thence west to the northern boundary line twenty-four (24) miles; thence south thirty (30) miles; thence east twenty-four (24) miles; thence north thirty (30) miles to the place of beginning.

Calhoun.

SEC. 31. That the county of Calhoun shall be bounded as follows: Beginning at the north-west corner of Jefferson county; thence west twenty-five (25) miles; thence south to the main channel of the Kansas or Kaw river; thence along said channel to the south-west corner of Jefferson county; thence north to the place of beginning.

Marshall.

SEC. 32. That the county of Marshall shall be bounded as follows: Beginning at the north-west corner of Nemaha county; thence west on the boundary line thirty (30) miles; thence south thirty (30) miles; thence north thirty (30) miles to the place of beginning.

Riley.

SEC. 33. That the county of Riley shall be bounded as follows: Beginning at the south-west corner of Marshall county; thence south to the main channel of the Smoky Hill Fork of the Kansas river; thence down said channel to the south-west corner of the county of Calhoun; thence north to the south-east corner of the county of Marshall; thence west thirty (30) miles to the place of beginning.

Weller and Richardson, Madison, Butler, Wise, Coffey, &c., &c.,

SEC. 34. That the counties of Weller and Richardson are hereby attached to the county of Shawnee; and the counties of Madison, Butler and Wise to the county of Breckenridge; the county of Coffey to the county of Anderson; the county of McGee to the county of Bourbon; and the counties of Greenwood, Hunter, Dorn, Wilson, Woodson and Godfroy to the county of Allen; and the county of Browne to the county of Doniphan; and the county of Davis to the county of Riley, for civil and military purposes; and further, the inhabitants of any county so attached shall not be taxed for local purposes in the county to which they are so attached; and all that portion or strip of territory between Calhoun and Riley counties, not belonging to either, shall be attached to, and form a part of the county of Calhoun.

Lecompton, permanent seat of justice, &c., &c.

SEC. 35. That the town of Lecompton shall be the permanent seat of justice of the county of Douglas. The town of

Tecumseh to be the permanent seat of justice for the county of Shawnee. Paola the permanent seat of justice of the county of Lykins. The town of Fort Scott the permanent seat of justice of the county of Bourbon. The town of Cofachique the permanent seat of justice of the county of Allen. The town of Richmond the permanent seat of justice of the county of Nemaha. The town of Marysville the permanent seat of justice of the county of Marshall. The town of Pawnee the permanent seat of justice of the county of Riley. The town of Atchison the permanent seat of justice of the county of Atchison. The town of Osawkee shall be the permanent seat of justice of the county of Jefferson. The town of Calhoun the permanent seat of justice of the county of Calhoun. Ths permanent seat of justice of Johnson county shall be at the Gum Spring, near the Shawnee Methodist meeting-house. The town of Columbia shall be the permanent seat of justice of the county of Madison.

Seats of justice to be located.

Sec. 36. All the counties not having permanent seats of justice located as in the preceding section, shall be temporarily located by the court transacting county business, and the inhabitants of said counties shall, under the direction of the court transacting county business, at the election on the second Monday in October next, held for that purpose, elect three commissioners, who shall proceed to locate said permanent seats of justice for said counties. Said commissioners, so elected, shall receive three dollars per day for the time they may be necessarily engaged in locating seats of justice, to be paid by the county. The commissioners, so appointed for the county of Lynn, shall locate the county seat of said county within three miles of the geographical centre of Lynn county: *Provided*, nothing herein contained shall apply, where otherwise provided by this act.

Inhabitants, to what attached.

Sec. 37. That all the inhabitants residing west of the counties so organized or attached, shall be attached to the counties that they are immediately west of.

Boundary lines defined.

Sec. 38. That after the lands of this territory are surveyed and subdivided by the government of the United States, the township, section, or legal subdividing lines that shall come the nearest to the boundaries described in the bill, shall be considered the lines here defined.

This act shall take effect and be in force from and after its passage.

CHAPTER 31.

COUNTY BUILDINGS.

An Act regulating the erection of county buildings.

§ 1. Court-house and jail to be erected; where.
2. Tribunals to procure suitable places for courts, &c.
3. Duties of tribunal transacting county business.
§ 4. Tribunal to designate places on which to erect buildings.
5. Duty of superintendent.
6. When payments may be made.
7. On what lands public buildings may be erected.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Court-house and jail to be erected, where.

SECTION 1. There shall be erected at the county seat of each county, at the earliest practicable period after the organization of a county, and the location of a county seat, a good and sufficient court-house and jail, and such other public buildings as the exigencies may demand, which shall be constructed upon such plan and of such materials as shall be prescribed by the tribunal transacting county business, and under the supervision and control of a commissioner of the county as superintendent of public buildings.

Tribunal to procure suitable places for courts, &c.

SEC. 2. Until the erection of public buildings, the tribunal transacting county business shall procure, by rent or otherwise, suitable places for the sitting of all courts, and some suitable place for the keeping of the records of the county.

Duties of tribunal transacting county business.

SEC. 3. Whenever the tribunal for the transaction of county business shall determine by order to erect any public buildings, they shall adopt and approve a plan therefor, determine upon an estimate of its cost, and make an appropriation of the necessary amount of money for such purpose; and, if necessary, may levy a special tax upon all lawful objects of taxation, which shall not exceed the amount levied for ordinary county purposes; and they shall make an order directing the superintendent of public buildings to contract for the erection of such public buildings, either to the lowest bidder by public outcry, or upon private bids deposited with such superintendent, or in such other manner as such tribunal may order; *provided*, that such contracts shall not exceed the amount appropriated for that purpose.

Tribunal to designate place on which to erect buildings.

SEC. 4. The tribunal for the transaction of county business shall designate the place on which to erect any county building, on any grounds belonging to the county, or which may be donated or otherwise procured for that purpose at the county seat; or if a poor-house or other building of that nature, upon such grounds in the county and owned by the county as they may designate.

Duty of superintendent.

Sec. 5. The superintendent of public buildings shall take from the contractor of any building let out, bond with approved security in a penalty of at least double the amount of the contract, conditioned for the faithful performance of the contract, as specified in such condition to said bond.

When payments may be made.

Sec. 6. When payments upon such contract shall be by instalments, the tribunal transacting county business shall, upon the certificate of the superintendent of public buildings that a due proportion of the work has been completed and executed according to contract, order a warrant upon the county treasurer for such amount as may be due upon the contract, payable out of the building fund or of any money in the treasury not otherwise appropriated, as the tribunal may order.

Where public buildings may be erected.

Sec. 7. Any and all public buildings provided for in this act may be erected upon any public lands to which the title of the United States may not have been extinguished, either within or without the limits of any town or city; *provided*, that the tribunal transacting county business shall have a reasonable assurance of a title thereto in prospective.

This act shall take effect and be in force from and after its passage.

CHAPTER 32.

COUNTY TREASURER.

An Act to establish the office of county treasurer.

§ 1. Office of county treasurer established.
2. County treasurer how appointed and when elected.
3. To give bond for faithful performance, &c.

§ 4. To keep his office at the county seat.
5. To pay warrants drawn on him.
6. To make an annual settlement.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Office of county treasurer.

Section 1. That there is hereby established in each county within this territory the office of county treasurer.

How appointed and when elect &c.

Sec. 2. The tribunal transacting county business in each county shall appoint a county treasurer, who shall hold his office until the election for members of the legislative assembly in the year eighteen hundred and fifty-seven; when his successor shall be elected by the qualified voters of the county, and until his successor shall be duly qualified; and the person thus elected, and every person thereafter elected to the office of county treasurer, shall be thus chosen, and shall hold his office for the term of two years, or until his successor is duly qualified.

To hold his office for two years.

To give bond for faithful performance of duties, &c.

SEC. 3. The county treasurer shall give bond to the territory of Kansas, in such sum as may be prescribed by the tribunal transacting county business, with two or more good and sufficient securities, conditioned that he will faithfully perform all the duties of his office, and duly account for and pay over, when lawfully required so to do, all moneys that may come to his hands by virtue of his office.

To keep his office at the county seat.

SEC. 4. The county treasurer shall keep his office at the county seat of the county, and he shall procure at the expense of the county, all needful books and stationery for the use of his office; and the tribunal transacting county business shall audit and allow all necessary costs of books and stationery for the office of treasurer, as aforesaid.

To pay all warrants drawn on him.

SEC. 5. The county treasurer shall pay, out of the proper fund, all warrants drawn upon him by competent authority, so far as he may have in his hands funds belonging to such fund.

To make an annual settlement, &c.

SEC. 6. The county treasurer shall make an annual settlement of his accounts with the tribunal transacting county business, which settlements shall be spread at full upon the records of the tribunal aforesaid.

This act to take effect and be in force from and after its passage.

CHAPTER 33.

COUNTIES OF WASHINGTON AND MARION.

An Act establishing the counties of Washington and Marion, and to define the boundaries thereof.

§ 1. Boundaries of Washington county.
2. Boundaries of Marion county.
§ 3. To be attached to the county of Allen.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries of Washington.

SECTION 1. That all that territory comprised within the following limits, to wit: Commencing at the southern boundary of the territory of Kansas, fifteen miles west of a due south course from the mouth of the Walnut creek, on the Arkansas river, and running from thence north one hundred miles, thence west to the east line of Arapahoe county, thence south along said line to the south line of Kansas, thence east along the said line to the place of beginning, shall constitute the county of Washington.

Marion.

SEC. 2. All that territory comprised within the following limits, to wit: Commencing at the north-east corner of Washington county, thence running due east to the west line of Butler county, thence due south to the southern line of the territory of Kansas, thence west along said line to the east line of Washington county, thence north with said line to place of beginning, shall constitute the county of Marion.

To be attached to Allen county.

SEC. 3. The counties of Washington and Marion shall be attached to the county of Allen for judicial and other purposes.

This act to take effect and be in force from and after its passage.

CHAPTER 34.

COUNTY OF MADISON.

An Act attaching certain territory to the county of Madison.

§ 1. County of Wise shall be attached to, &c.
2. County of Breckenridge shall be attached, &c.
§ 3. Columbia the county seat of Madison county.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

County of Wise to be attached, &c.

SECTION 1. The county of Wise shall be attached, for all civil, criminal and military purposes, to the county of Madison.

County of Breckenridge shall be attached, &c.

SEC. 2. The county of Breckenridge is also attached to the county of Madison for all civil, criminal and military purposes.

The town of Columbia made county seat, &c.

SEC. 3. The town of Columbia is hereby declared to be the county seat of Madison county, until the end of the next session of the legislative assembly.

This act to take effect and be in force from and after its passage.

CHAPTER 35.

COUNTY OF ATCHISON.

An Act supplementary to "an act defining the boundaries of Atchison county.

SEC. 1. Additional territory attached to Atchison county.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Additional territory attached to Atchison county.

SECTION 1. That the portion of territory which lies north of the line running due west from the south-east corner of Doniphan county, and south of the south line of Doniphan county, is hereby declared to form a part of Atchison county.

This act to take effect and be in force from and after its passage.

CHAPTER 36.

COUNTY OF ATCHISON.

An Act more especially to define the county boundaries of the county of Atchison.

§ 1. Boundaries of the county of Atchison.
2. Reference to the town of Kickapoo.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries of the county of Atchison.

SECTION 1. That the boundary of the county of Atchison shall be as follows: Beginning at the south-east corner of the county of Doniphan, thence west to the point where the line of Doniphan runs north; thence along said line to the place where said line turns west; thence along the said line of the county of Doniphan, to a point which would make the north-west corner of the county of Atchison, twenty-five miles west of the place of beginning; thence south sixteen miles; thence east to the main channel of the Missouri river; thence up said channel to the place of beginning.

Reference to the town of Kickapoo.

SEC. 2. Any thing in the act to define the boundaries of the several counties in Kansas territory, to the contrary notwithstanding, except so much as refers to the town of Kickapoo.

This act to take effect and be in force from and after its passage.

CHAPTER 37.

COUNTY OF ARAPAHOE.

An Act to organize the county of Arapahoe, in the territory of Kansas, and to define the boundaries thereof.

§ 1. Boundaries of Arapahoe county.
2. Allen P. Tibbitts made probate judge.
3. County officers shall hold their offices at the county seat.
4. Probate judge shall have power to appoint certain officers.
§ 5. Probate judge can fill any other office not conflicting with his duties.
6. Appointment of county commissioners.
7. Appointment of clerk.
8. Justices of the peace, how appointed.
9. Sheriff and treasurer, how appointed.
10. Officers to hold office until next election.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Arapahoe, boundaries of.

SECTION 1. All that part of the territory of Kansas, described within the following limits, to-wit: Beginning at the northeast corner of New Mexico, running from thence north to the south line of Nebraska and north line of Kansas; thence along said line to the east line of Utah territory; thence along said line between Utah and Kansas territories, to where said line strikes New Mexico; thence along the line between said New Mexico and the territory of Kansas, to the place of beginning, shall be, and is hereby declared to constitute a county, to be known as Arapahoe county.

Allen P. Tibbitts made probate judge.

SEC. 2. Allen P. Tibbitts is hereby appointed judge of the probate court of Arapahoe county. Said court to be held at such place in said county as the said judge shall deem best for the interest of the citizens of said county: *Provided*, always, that the place designated as the county seat shall be one place of holding said court, at which place shall be kept the records of said court, where all official business shall be transacted in vacation.

Offices to be kept at county seat.

SEC. 3. All county officers shall hold their offices at said county seat.

Probate judge to appoint officers.

SEC. 4. The said judge of probate shall have power to appoint such officers of the county as are specified in this act, but not appointed, and justify the same; all such appointments made by judge of probate shall be entered of record.

Can fill any other office not conflicting with his duties.

SEC. 5. The judge of probate shall not be ineligible to fill any other office in the county, not conflicting with the duties of probate judge.

Appointment of county commissioners.

SEC. 6. Allen P. Tibbitts, Levi Mitchell, and Jonathan Atwood, are hereby appointed commissioners to locate the county seat; said county seat to be known by the name of Mountain City; said commissioners, so appointed, be and constitute the board of county commissioners to transact county business.

Appointment of clerk.

Sec. 7. James Stringfellow is hereby appointed clerk of the county or probate court, who, by virtue of his office, shall be ex-officio recorder.

Power to appoint justices of the peace.

Sec. 8. The said judge of probate shall have full power to appoint a justice or justices of the peace, within and for said county, who shall hold his or their offices at the place, designated by said judge.

Sheriff and treasurer.

Sec. 9. There shall be appointed by said judge, one sheriff, one treasurer, (who shall be ex-officio assessor,) and one surveyor.

Officers to hold office until next election.

Sec. 10. All persons appointed under the provisions of this act shall hold their offices until the first general election thereafter, at which time said offices shall be filled by elections.

This act to take effect and be in force from and after its passage.

CHAPTER 38.

COUNTY OF ARAPAHOE.

An Act in relation to Arapahoe county, and attaching certain territory.

§ 1. To elect one representative to legislative assembly.
2. To be attached to the county of Marshall.
§ 3. Other territory to be attached to the county of Marshall.
4. Territory to be attached to the county of Riley.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

To elect one representative to the legislative assembly.

Section 1. The county of Arapahoe shall, at the general election in the year eighteen hundred and fifty-six, and at the general election every year thereafter, elect one representative in the legislative assembly of the territory of Kansas.

To be attached to the county of Marshall.

Sec. 2. The county of Arapahoe shall be attached to the county of Marshall for all business purposes, properly cognizable in the district court, arising under the laws of the United States or the laws of the territory of Kansas, and all causes or matters arising within the said county of Arapahoe.

Territory to be attached to the county of Marshall.

Sec. 3. All the territory lying due west of the county of Marshall and east of the county of Arapahoe shall be attached to the county of Marshall for civil, criminal and military purposes.

Territory to be attached to the county of Riley.

SEC. 4. All that country lying west of the county of Riley, and between the counties of Riley and Arapahoe, shall, for all civil, criminal and military purposes, be attached to the county of Riley.

This act to take effect and be in force from and after its passage.

CHAPTER 39.

COUNTY ORGANIZATION.

An Act in relation to county organizations, powers and privileges.

§ 1. Counties vested with corporate powers.
2. Real estate to be conveyed to county by deed, &c.
3. Duty of tribunal transacting county business.
4. All contracts, &c., valid, &c.
5. Tribunal to perform certain duties.
§ 6. *Actions to proceed to final judgment.* Exception.
7. Of local or transitory actions.
8. Copy of declaration to be left with clerk.
9. Who to be jurors or witnesses.

Vested with corporate powers.

SECTION 1. All counties which may be organized in the territory are hereby vested with full and absolute corporate powers and authority, and as such, by their name as a county, may sue and be sued, implead and be impleaded, prosecute and defend in all courts, in all matters in which such county may be a party in interest; and may have and hold any amount of property, real, personal or mixed, which may be necessary for the transaction of their business for the public accommodation, or for the public weal, or for the proper development of the resources of the territory.

Real estate to be conveyed to county by deed, &c.

SEC. 2. All real estate acquired by any court, by purchase or otherwise, shall be conveyed to the county by deed in the name of the county, and such conveyance shall vest in such county a fee simple title, with full power to sell and dispose of the same for the benefit of the county.

Duty of tribunal transacting county business.

SEC. 3. The tribunal for the transaction of county business may, by order, appoint, from time to time, as occasion may require, a commissioner, who shall hold his office for the term of twelve months, or for the term necessary for the transaction of the special business for which he was appointed; who, having taken and subscribed the oath of office prescribed by law, and caused the same to be endorsed on the certificate of his appointment, may, as such commissioner in behalf of such, sell and dispose of any real or personal property belonging to such county, and convey the same, if real estate, by deed duly executed and acknowledged, and such deed shall vest in the purchaser all the right, title, interest and claim which the said county have in and to such real estate at the time of such sale and conveyance; and such commissioner shall receive such reasonable compensation for his services as may be allowed by the tribunal transacting county business.

All contracts, &c., valid and vested.

SEC. 4. All notes, bonds, bills, contracts, covenants, agreements or writings made, whereby any person shall be bound to any county, or to the inhabitants thereof, or to the governor, or any other person, in whatever form, for the payment of money or any thing, or the performance of any matter or thing for the use of any county, shall be as valid and effectual to vest in such county all the right, interest and actions which would be vested in any individual in any such contract, made directly to him; and suits may be commenced and prosecuted thereon in the name of such county, or in the name of the person to whom they are made, to the use of the county, as fully and effectually as any person may or can upon like notes, bills, bonds, contracts, agreements, or writings, made to him.

Tribunal to perform certain duties.

SEC. 5. The tribunal transacting county business may, from time to time, appoint an agent or agents to make any contract or contracts for such county on behalf of such, for the erection, improvement or repairs of any county building, bridge, culvert or other structure deemed necessary, or for any other purpose authorized by law; and such agent, having taken the official oath prescribed by law, shall have full power and authority to bind such county by contract duly executed.

Actions may be proceeded to final judgment; exception.

SEC. 6. All actions, local or transitory, against any county, may be proceeded, commenced and prosecuted to final judgment and execution in the district court of the county against which the action is brought; but no court-house, jail, clerk's office, poor-house, or any other public buildings, or the grounds on which they stand, shall be subject to the execution of any creditor of such county.

Of local actions.

SEC. 7. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant in such action resides.

Copy of declaration to be left with clerk.

SEC. 8. When any action shall be commenced against any county, a copy of the declaration and summons shall be left with the clerk of the tribunal for the transaction of county business, at least fifteen days before the return day thereof.

SEC. 9. In all actions brought by or against any county, the inhabitants of the county, so suing or being sued, may be jurors or witnesses, if otherwise competent or qualified.

Who, jurors or witnesses.

This act to take effect and be in force from and after its passage.

CHAPTER 40.

COUNTY SEAT.

An Act to provide for the location of the county seat of Leavenworth county.

§ 1. Election to be held to locate the county seat.
§ 2. Duty of tribunal transacting county business.
3. Clerk to prepare poll-books.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. There shall be held at the towns of Kickapoo, Leavenworth, Delaware, Wyandotte City, Summerville, and Alexandria, in the county of Leavanworth, on the second Monday in October, in the year eighteen hundred and fifty-five, an election for the location of the permanent county seat of the said county of Leavenworth; and a poll shall be opened at each of the places aforesaid, and every legal voter of said county may vote for the place of his choice, and the place having the highest number of votes shall be the permanent county seat of said county.

Election to be held to locate the county seat.

SEC. 2. The tribunal for the transaction of county business shall, at as early a day as practicable, and before the second Monday in October, eighteen hundred and fifty-five, meet at such place as a majority of the members of such tribunal shall agree upon and organize, and shall immediately appoint three judges of election for each of the places aforesaid, which judges shall take an oath faithfully to discharge the duties of judges of such election, according to the laws governing elections, and shall return the poll-books of the said election to the clerk of the tribunal transacting county business; and such tribunal shall, within ten days after such election, meet at the place agreed on in the former part of this section specified, or if they should fail to meet within ten days, then at as early a day as practicable thereafter, and cast up the votes given for each place voted for, and shall declare the place having the highest number of votes the permanent county seat of the said county of Leavenworth.

Duty of tribunal transacting county business.

Clerk to prepare poll-books.

SEC. 3. The clerk of the tribunal transacting county business shall prepare for each of the points in the first section of this act mentioned, poll-books for said election; but in the event that said clerk fail to furnish such poll-books, then such judges shall provide said poll-books.

This act to take effect and be in force from and after its passage.

CHAPTER 41.

DISTRICT COURT.

An Act prescribing the times of holding the district courts.

§ 1. Times of holding district court of first judicial district.
2. Of second judicial district.
§ 3. Of third judicial district.
4. Times and places where district courts to be held in 1855.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Times for holding district courts of first judicial district.

SECTION 1. The district courts of the first judicial district shall be held at the following times: In the county of Doniphan, on the first Mondays of March and August; in the county of Atchison, on the second Mondays of March and August; in the county of Leavenworth, on the third Mondays of March and August; in the county of Jefferson, on the fourth Mondays of March and August; in the county of Calhoun, on the first Mondays of April and September, in the year one thousand eight hundred and fifty-six, and on the same days in every year thereafter.

Of second judicial district.

SEC. 2. The district courts of the second judicial district shall be held at the following times: In the county of Franklin, on the third Mondays of April and September; in the county of Anderson, on the fourth Mondays of April and September; in the county of Allen, on the first Tuesdays of May and October; in the county of Bourbon, on the second Mondays of May and October; in the county of Linn, on the third Mondays of May and October; in the county of Lykins, on the fourth Mondays of May and October; in the county of Johnson, on the first Mondays of June and November, and in the county of Shawnee, on the second Mondays of June and November, in the year one thousand eight hundred and fifty-six, and on the same days in every year thereafter.

Of third judicial district.

SEC. 3. The district courts for the third judicial district shall be held at the following times: In the county of Nemaha, on the third Mondays of June and November; in the county of Marshall, on the fourth Mondays of June and November; in the county of Riley, on the second Mondays of July and December; in the county of Breckenridge, on the third Mondays of July and December, in the year one thousand eight hundred and fifty-six, and on the same days in every year thereafter.

Times and places where district courts to be held in 1855.

Sec. 4. There shall be held a district court for the year one thousand eight hundred and fifty-five, at the following times and places: In the county of Leavenworth, on the third Monday in September; in the county of Atchison, on the fourth Monday of September; in the county of Doniphan, on the first Tuesday of October; in the county of Jefferson on the second Monday of October; in the county of Calhoun, on the third Monday of October; in the county of Douglas, on the fourth Monday of October; in the county of Franklin, on the first Monday of November; in the county of Anderson, on the second Monday of November; in the county of Allen, on the third Monday of November; in the county of Bourbon, on the fourth Monday of November; in the county of Linn, on the second Monday of December; in the county of Lykins, on the third Monday of December; in the county of Johnson, on the first Thursday after the third Monday in December; in the county of Shawnee, on the fourth Monday of December; in the county of Nemaha, on the third Thursday of September; in the county of Marshall, on the fourth Thursday of September; in the county of Riley, on the first Thursday of October; in the county of Breckenridge, on the second Thursday of October; in the county of Madison, on the third Thursday of October.

This act to take effect and be in force from and after its passage.

CHAPTER 42.

DISTRICT COURTS.

An Act prescribing the jurisdiction of the supreme court in certain cases, and for other purposes.

§ 1. Cases in which district court has exclusive jurisdiction; appellate jurisdiction.
2. Powers of judges.
3. When a judge may hold court out of his district.
§ 4. Recognizance bound, &c.
5. Judges may hold adjourned terms.
6. In cases of appeal and *certiorari*, cause to be tried *de novo*.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Cases in which district court has exclusive jurisdiction.

SECTION 1. That, from and after the passage of this act, the district court in and for the said territory shall have exclusive jurisdiction in all cases of equity whatsoever, and in all civil actions or suits within their respective districts where the amount in controversy shall exceed one hundred dollars, except in such cases where concurrent jurisdiction may be given by law to some other court; and the said district court shall have original and exclusive jurisdiction in all cases of crime and misdemeanor whatsoever, committed in violation of the laws of this territory, and appellate jurisdiction in all cases from the probate court and justices of the peace, by appeals or a *certiorari*, except where otherwise provided by law; and the judges of the said district courts shall be conservators of the peace.

Appellate jurisdiction.

Powers of judges, &c.

SEC. 2. The district court, or the judges thereof in vacation, shall have power to award, throughout the territory, returnable to the proper district and county, all writs of attachment or process whatsoever; and the said district court may fine or imprison for contempt either to the court or its suits, mandates, or authority, provided the fine shall not exceed the sum of one hundred dollars, or the imprisonment for a longer period than twenty-four hours, for any single contempt; though the said court may imprison within his discretion in the event of the non-payment of the fine; and the said courts shall have power and authority to do all things to maintain the dignity of the court or the supremacy of the law.

When another judge may hold a court out of his district.

SEC. 3. If from sickness, or from other cause, any judge shall be unable to hold any court within his district, the judge or clerk of said court shall notify one of the other judges, and it shall be the duty of the judge so notified to hold said court or courts. If either of the said judges of the said court shall fail to appear on the first day of the term thereof, at the place of holding said court, the clerk thereof shall adjourn said court from day to day until 5 o'clock, P. M., of the third day; and if the said judge has not appeared, the clerk shall adjourn said court until the next regular term, unless the judges thereof shall designate an earlier day.

Recognizances bound, &c.

SEC. 4. All persons bound to appear, and all recognizances made returnable at any term of said court, shall be bound by their said recognizances to appear at the next succeeding term of said court. No process, cause, proceeding, or writ on any case, civil or criminal, whatever, shall abate on account of the failure of any court to be holden at the time specified by law, but shall stand continued. The adjournment of said district court shall not effect the validity, test, service, or return of any process or writ made returnable to said court to a day of such term, subsequently to the adjournment. All writs and process whatsoever from the district court shall be tested by the name of the presiding judge thereof.

May hold adjourned terms.

SEC. 5. Either of the judges of the district court may hold an adjourned term of said court whenever it may be deemed necessary to complete the unfinished business of said court.

In cases of appeal, &c., cause to be tried *de novo.*

SEC. 6. In all cases of appeals and *certiorari* from the court of probate or justices of the peace to the district court, the cause shall be tried *de novo;* and in all cases of appeal or *certiorari*, the actor shall give bond in double the amount in controversy, including costs, payable to the other party, conditioned to prosecute his said case to effect, and to pay all damages and costs the other party may suffer and be a party to; *provided,* that all appeals shall be taken and the bond shall be sealed and delivered to the judge of the court of probate or the justices of the peace, and approved by them, within ten days after the rendition of the said judgment, and notice thereof be served on the other party.

This act to take effect and be in force from and after its passage.

CHAPTER 43.

DISTRICT COURT.

An Act to confirm and make valid certain acts of the first district court of the territory of Kansas.

SEC. 1. Acts of the first district court confirmed and made valid.

Whereas the honorable Samuel D. Lecompte, as judge of the first district court, upon the application of H. Rich, a creditor of E. F. Barnard, late of this territory, deceased, in the exercise of the chancery jurisdiction appertaining to the said court, did appoint R. L. Ream to take charge of and preserve the personal effects of the said E. F. Barnard until such time as, under the provisions of law enacted by the legislative assembly, administration might be regularly granted upon the estate of the said deceased, the said R. L. Ream giving security, approved by the said judge, for the faithful performance of the duty thereby imposed; and whereas, also, upon application of Frederic Ewing, he, the said

Frederic Ewing, was, by the same judge, in the exercise of a like power, appointed to take charge of the personal effects of John Pansen, late of said territory, deceased, a bond as in the above case being executed, with securities in the same manner approved: Therefore,

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Acts of the first district court confirmed and made valid.

Section 1. That the acts of the said Samuel D. Lecompte, judge as aforesaid, be and they are hereby confirmed and made valid, and that the bonds, so taken be and the same are hereby declared to be, to all intents and purposes, binding and effectual; and that all and every proceeding and order in the said cases be and the same are hereby declared to be competent evidence in any suit or suits that may arise in which the question of the fidelity of either of the persons, so approved in the performance of their duty, may come in question.

This act to take effect and be in force from and after its passage.

CHAPTER 44.

PROBATE COURT.

An Act to establish a probate court, with the powers and duties of a board of commissioners, and to define its jurisdiction.

§ 1. Probate judges, how and when elected.
2. Who are eligible to the office.
3. Vacancies to be filled by county tribunal.
4. To hold office for four years.
5. Governor to commission probate judges.
6. Probate court a court of record.
7. Expenses to be paid by county tribunal.
8. In what matters probate court to have exclusive jurisdiction.
9. Probate court to have concurrent jurisdiction.
10. Probate court to have concurrent jurisdiction with district court.
11. When judgment to be taken.
12. Appeals from justice of the peace.
13. How appeals to be tried.
14. May grant writs of injunction.
15. May grant writs of habeas corpus.
16. May solemnize marriages, &c.
17. To keep a record of all wills, bonds, &c.
18. May issue *mesne* process.
19. All process to be attested.
20. Sheriff to attend court.
§ 21. Authority to enforce obedience.
22. Concurrent jurisdiction with district court in equity.
23. To hold four regular terms.
24. Laws and statutes to govern.
25. Appeals from probate courts, how governed.
26. Right of trial by jury.
27. When appeals to be taken.
28. Board of commissioners.
29. How constituted.
30. Governor to commission.
31. Powers of the board.
32. To build bridges, &c.
33. Shall appoint a clerk.
34. Shall appoint a county treasurer.
35. Powers of the board.
36. Majority to constitute a quorum.
37. May adjourn.
38. Seal of office; proviso.
39. Term of their office.
40. Not prohibited from practice.
41. To keep his office at the county seat.
42. Clerk of board to act as clerk of probate when required.
43. May hold adjourned terms.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Probate judge, how and when elected.

SECTION 1. That there be and is hereby established in each county of the territory a probate court; and there shall be elected by joint ballot of the legislative assembly, at the present session, a probate judge for each county in the territory, who shall hold his office until the general election for members of the legislative assembly, in the year eighteen hundred and fifty-seven, and until their successors are duly elected, commissioned and qualified.

Who are eligible to the office.

SEC. 2. No person shall be eligible to the office of probate judge, except he be a citizen of the United States, and an actual resident of the territory and of the county for which he is elected, for three months, or at the time of the organization of the county, at the time of election.

Vacancies to be filled by county tribunal.

SEC. 3. Should a vacancy happen, from any cause, in the office of probate judge in any county, the same shall be filled by the tribunal transacting county business, until the next session of the legislative assembly; and then the legislative assembly shall fill such vacancy by joint vote for the unexpired term.

To hold office for four years.

SEC. 4. At the general election for members of the legislative assembly for the year eighteen hundred and fifty-seven, and every four years thereafter, there shall be elected by the qualified voters of each county within this territory, a probate judge, who shall hold his office for the term of four years, and until his successor is duly elected and qualified; and in case of tie in any election, the same shall be decided by the tribunal transacting county business.

Governor to commission judges of probate court.

SEC. 5. Each judge of probate shall be commissioned by the governor, and shall take the oath of office, prescribed by law; which oath of office shall be endorsed on his commission; and such commission shall be recorded in the records of his court.

Probate court a court of record.

SEC. 6. The probate court, as hereby established, shall be deemed for all purposes a court of record, and shall procure a seal with a proper device and inscription, to be prescribed by such court; and until such seal is procured, such judge of probate may use a scrawl for his private seal, and may attest all official acts by such private seal.

Expenses to be paid by county tribunal.

SEC. 7. The probate judge shall procure all needful and necessary books, stationery and furniture for his office, and the costs thereof, together with the costs of a seal of office for such probate court, shall be audited and paid by the tribunal transacting county business.

In what matters

SEC. 8. The probate court shall have original exclusive juris-

Probate court to have exclusive jurisdiction.

diction in all matters relating to the probate of last wills and testaments; granting letters testamentary and of administration; of the appointment of guardians and curators; of all matters relating to the settlement and distribution of decedents' estates, and the personal, real or mixed estates of minors; all actions against executors, administrators, guardians or curators; to authorize guardians, administrators, or executors, to sell and convey the real estate of their wards; the appointment of guardians for persons of unsound mind; the examination and allowance of accounts of guardians of infants and persons of unsound mind, or of executors or administrators; a superintending control of masters and apprentices, and a general jurisdiction of all matters arising under the relationship of master and apprentice; and also a general superintending control of all estates, testate or intestate; and a jurisdiction of all matters of every kind, arising under the laws regulating or in relation to executors and administrstors, or all laws in relation to descents and distributions; to adjudge, and measure, and set apart to widows, dower in the estates of their deceased husbands, whether real, personal or mixed; a jurisdiction in all matters of a partition of land, slaves or other personal property, or of any other effects of which heirs, devisees, infants or persons of unsound mind may be entitled to partition, and of all laws in relation to partition, and the control of the persons and estates of orphans within their respective counties: *Provided*, that nothing herein shall be so construed as to affect the jurisdiction of any court to which may be given, by law, concurrent jurisdiction in any matter in this section specified.

Probate court to have concurrent jurisdiction.

SEC. 9. The probate court shall have concurrent jurisdiction in all actions against heirs, devisees, sureties of executors, administrators and guardians, and all matters relating thereto; and the appointment of commissioners to execute deeds on any title bond given by a decedent, or to make any and all awards in relation thereto authorized by law.

Probate court to have concurrent jurisdiction with district court.

SEC. 10. The probate court shall have concurrent jurisdiction with the district court in all actions upon bond or note, or other liquidated demand for the direct payment of money or property, where the amount claimed, exclusive of interest, shall not exceed one thousand dollars; and on all accounts, or other unliquidated claims for money or property, where the amount claimed, exclusive of interest, shall not exceed five hundred dollars; and all the practice and pleadings lawful in the district court shall be applicable to the probate court.

When judgments to be taken.

SEC. 11. Judgments may be taken by confession in the probate court, in any of the class of cases mentioned in the last section, where the amount claimed or confessed shall not exceed the sum of one thousand dollars.

Appeals from justices.

SEC. 12. Appeals shall lie from the justices of the peace to the probate court or to the district court, in the discretion of the party taking such appeal.

How appeals to be tried.

SEC. 13. An appeal from the judgment of a justice of the peace to the probate court, shall be to the probate court of the county in which such appeal is taken; and the trial of the same in such probate court shall be governed by the laws regulating appeals from justices' courts.

May grant writs of injunction.

SEC. 14. The judge of the probate court may grant writs of injunction within his county, returnable in every case to the district court.

May have power to grant writs of *habeas corpus*.

SEC. 15. The judge of the probate court shall have power to grant writs of *habeas corpus*, returnable in every case to the district court; and if such judge of the district court is of opinion that the evidence makes out a probable case against the defendant, though it be a different crime or offence, or a crime or offence of a different nature from that for which the defendant was committed or arrested, or on which he is charged, it shall be the duty of any such judge to commit the accused or to hold him to bail, as the case may require, to answer the crime or offence which, in the opinion of such judge, is made out against the accused by the evidence.

May solemnize marriages, &c.

SEC. 16. The probate judge shall be authorized to solemnize marriages, administer oaths, take acknowledgments of deeds and other instruments, and shall be a conservator of the peace throughout his county.

To keep record of all wills, &c.

SEC. 17. Every judge of probate shall make, keep and preserve a complete record of all wills, testaments and codicpils, an the proof thereof; all letters testamentary and of administration, and of all bonds taken of executors and administrators, guardians and curators, and preserve the original bonds on file in his office; and all oaths and affirmations taken before him; all inventories, appraisements, sale bills and other exhibits, presented to and received by said court, appertaining to the administration of estates and guardianships, and shall enter of record the amount of such appraisements and sale bills, and other proper exhibits, under a proper head for easy reference; and shall enter of record all matters, controversies and suits that shall arise in his court for adjudication and decision, with the names of the parties, and all final and interlocutory judgments which he may make thereon, forming a perfect record of proceedings.

May issue *mesne* process.

SEC. 18. The judge of probate may issue all original or *mesne* process necessary to carry out the powers and jurisdiction given him in this act.

Process to be attested.

Sec. 19. All process issued by the probate judge shall be signed and attested by himself or his clerk, and shall have his seal of office affixed, and shall be served as process issuing from other courts of record.

Sheriff to attend court.

Sec. 20. The sheriff of each county shall attend the probate court at each term thereof, either by himself or by deputy, and shall execute all orders of such court.

Authority to enforce obedience, &c.

Sec. 21. The probate court shall have power to enforce due obedience to all the orders, rules, judgments and decrees made therein; may fine or imprison for contempt, offered to such court or its process, in the same manner and to the same extent as the district courts; may issue executions upon its judgments or decrees, which shall be governed in all respects by the laws regulating executions in this territory.

Concurrent jurisdiction with district court in equity, &c.

Sec. 22. The probate court shall have concurrent jurisdiction with the district courts in equity, in all matters in which executors and administrators are parties, where the amount in controversy shall not exceed one hundred dollars, and shall in all cases be governed by the rules governing courts of chancery, and be subject to and governed by all the laws governing the practice in courts of chancery.

To hold four regular terms.

Sec. 23. The probate court shall hold four regular terms annually: On the first Monday in March, June, September and December, and for granting of letters testamentary and of administration, taking the probate of last wills and testaments, and the doing of all thing necessary to confer free power and authority to executors, administrators, guardians and curators. The probate court shall at all times be deemed to be open.

Laws, &c., to govern probate court.

Sec. 24. All laws or statutes in force in this territory, in relation to the practice of law, or in relation to evidence, and returns of all process, and all other laws applicable to the jurisdiction of such court, shall govern and control the probate court.

Appeals from probate courts, how governed.

Sec. 25. An appeal, writ of error, *certiorari*, shall be from the probate court to the district court, or to the supreme court, in the discretion of the party appealing from any judgment, order or decree of such probate court, and such appeal shall in all things be governed and controlled by the laws in relation to appeals from the district courts to the supreme court. On any such appeal, the appellant, or some credible person for him, shall file an affidavit stating that the appeal is not taken for vexation or delay, but that justice may be done. And such appellant or some one for him, shall give bond with sufficient securities in a sum sufficient to save harmless the appellee, and all officers and others interested, conditioned that he will faithfully prosecute his appeal and pay all losses or damages that may accrue to the appellee or other parties interested. If such appeal be taken to the supreme court, it shall be tried on bill of exception, as other causes in the supreme court; and if taken to the district court, it may be tried *de novo* upon testimony, or on bill of exception as in the supreme court, as the appellant may elect at the time of taking his appeal.

Right of trial by jury.

Sec. 26. In all trials in the probate court, either party shall have the right of trial by jury, and such jury shall consist of twelve good and lawful men of the county, and shall be summoned in the same manner and be subject to the same penalties for disobedience as in the district court.

When appeals to be taken.

Sec. 27. All appeals from the probate court shall be taken during the term at which the decision appealed from was made.

Board of commissioners.

Sec. 28. There shall be and is hereby established in each county in this territory, a tribunal transacting county business, to be called the board of commissioners for the county, and the probate judge of each county shall be the president of the board of commissioners.

How constituted.

Sec. 29. The present session of the legislative assembly shall elect by joint ballot two commissioners, who shall be associated with the probate judge and constitute the board of commissioners, and shall be the tribunal transacting county business.

Governor to commission.

Sec. 30. Such commissioners when so elected, shall be commissioned by the governor and take the oath of office prescribed by law, which oath of office shall be endorsed on such commission, and the same shall be recorded on the records of such board of commissioners.

Powers of board.

Sec. 31. The board of commissioners, in their respective counties, shall have power and authority to levy and cause to be collected a tax upon all property and effects in the county, either real, personal or mixed, subject to taxation by law, for the necessary expenditures of the county, not to exceed the amount of taxation levied for territorial purposes in such county, except in cases provided for by law.

To build bridges, &c.

Sec. 32. They shall have power to build bridges and open and keep in repair roads and highways, within their respective counties, and they shall provide ways and means for the erection of all public buildings necessary for the transacting of county business, they shall cause to be erected or otherwise procure for the several counties suitable court houses, jails, clerks' offices, and other public buildings deemed necessary.

Shall appoint a clerk.

SEC. 33. The probate judge and county commissioners shall appoint in each county a clerk of the board of county commissioners, and shall grant to him a certificate of his appointment, and he shall be commissioned by the governor and take the oath of office prescribed by law, which shall be endorsed thereon, and such commission shall be recorded in the records of the probate court; and such clerk shall also give his bond with sufficient security, in the penal sum to be prescribed by such board of commissioners, not less than one thousand dollars, conditioned for the faithful performance of the duties of his office.

Shall appoint a county treasurer.

SEC. 34. The board of county commissioners shall appoint a county treasurer, coroner, justices of the peace, constables, and all other officers provided for by law, which several officers shall be commissioned by the governor, and the said tribunal shall have the power and authority to appoint all commissioners or agents provided for by law.

Powers of board.

SEC. 35. The board of commissioners shall have control and management of the property and effects, real, personal and mixed, belonging to the respective counties, and full power and authority to purchase or receive by donation any property, real or personal, for the use and benefit of the county, appropriating the proceeds of such sale to the use of the county, and to audit and settle all demands against the county.

Majority a quorum.

SEC. 36. A majority of the board of commissioners shall constitute a quorum to do business, and when there shall be a tie upon any question arising in said board, the question shall be reserved for the decision of a full board, except in questions involving a revision, rehearing or reconsideration, and on all such questions the affirmative shall yield.

May adjourn.

SEC. 37. A single member of the board may adjourn from day to day, and require and enforce by attachment the attendance of absentees.

Seal of office.

SEC. 38. The board shall procure a seal with an appropriate device, which shall be kept by the clerk, and by him affixed to all his official acts and certificates: *Provided*, that until a seal is procured, a scrawl shall have all the legal effect of such seal, he certifying that he affixes his private seal, no seal of the board having been provided.

Proviso.

Term of office.

SEC. 39. The commissioners provided for in this act shall hold their offices until the general election for members of the legislative assembly in the year eighteen hundred and fifty-seven, and at such general election the qualified voters of each county shall elect two commissioners, who shall hold their offices for four years, and until their successors are duly elected and qualified.

SEC. 40. Nothing in this act shall be so construed as to prohibit the probate judges and commissioners, provided for in this act, from practicing law in any courts, and in relation to any matter not coming in conflict with the jurisdiction severally given them by this act.

Not prohibited from practice.

SEC. 41. The probate judge shall keep his office and hold his courts at the county seat of his county, and the clerk of the board of commissioners shall be ex-officio clerk of the probate court, and in the absence of such judge, shall possess all the powers, and perform all the duties and receive all the emoluments of such judge, in the granting letters testamentary and of administration, taking the probate of last wills and testaments and the doing of all things necessary to confer full power and authority to executors, administrators, guardians or curators, to act until the next succeeding term of the probate court. All which acts of said clerk shall be subject to the rejection or confirmation of the judge of probate.

To keep his office at the county seat.

SEC. 42. The clerk of the board of county commissioners, as ex-officio clerk of the probate court, shall, when required to do so by the probate judge, act as clerk of the probate court, but shall in no instance receive the fees provided for probate business, except in the transaction of such business as he is required to do in the absence of the probate judge; but such clerk, when required to act as clerk of the probate court, shall be entitled to divide equally with such probate judge, the fees to which such judge is entitled for the business actually done: *Provided*, that nothing in his act contained, shall be so construed as to require the probate court to require at any time the service of such clerk, but such probate judge shall have full power and authority to act as his own clerk, and shall in all such cases test all writs and process and do all things necessary therein, in his own name as judge of probate, and the seal of said probate court shall always be termed, whether used by the judge or clerk, as the seal of court.

Clerk of board to act as clerk of probate court, when required.

SEC. 43. The board of county commissioners shall hold a regular session on the third Monday of each month, and may adjourn from time to time, and hold adjourned terms whenever deemed necessary.

May hold adjourned terms.

This act to take effect and be in force from and after its passage.

CHAPTER 45.

PROBATE COURT.

An Act to provide for holding probate courts.

§ 1. Judges to determine the time of holding first term. To notify commissioners.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Probate judges to determine the time of holding first term.

SECTION 1. That unless otherwise provided by law, the probate judges of the representative counties shall determine upon the time and place of holding the first term, and place of holding the first commissioners' court, and for this purpose such judge of probate shall notify the remaining commissioners; and the place of holding the subsequent terms of said courts shall be determined by said board of commissioners, at their first term aforesaid.

o notify commissioners.

This act to take effect and be in force from and after its passage.

CHAPTER 46.

SUPREME COURT.

An Act to fix the time of holding the supreme court.

§ 1. When to hold sessions; may hold adjourned terms.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When to hold sessions.

SECTION 1. The supreme court shall hold a session on the first Monday in December, in the year eighteen hundred and fifty-five, and on the first Monday in December, in every year thereafter; but nothing herein contained shall prevent the said court from holding adjourned terms whenever the judges thereof shall deem it necessary.

May hold adjourned terms.

This act to take effect and be in force from and after its passage.

CHAPTER 47.

CRIMES AND PUNISHMENTS.

An Act to provide for the punishment of offences against the public health.

§ 1. Penalty for selling unwholesome provisions, &c.
2. Penalty for adulterating any substance, &c.
§ 3. Penalty for adulterating drugs, medicines, &c.
4. Penalty for inoculating with small pox, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Penalty for selling unwholesome provisions, &c.

SECTION 1. That if any person shall knowingly sell any kind of diseased, corrupt, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars.

Penalty for adulterating any substance, &c.

SEC. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt-liquor, or other liquor intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited and destroyed.

Penalty for adulterating drugs, medicines, &c.

SEC. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed.

Penalty for inoculating one's self with small pox, &c.

SEC. 4. If any person shall inoculate himself, or any other person, or shall suffer himself to be inoculated with the small pox, within this territory, with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the state prison not more than three years nor less than one year.

This act to take effect and be in force from and after its passage.

CHAPTER 48.

An Act concerning crimes and the punishment of offences against the persons of individuals.

§ 1. Murder in the first degree.
2. Murder in the second degree.
3. Punishment for murder in the first and second degrees.
4. Justifiable homicide.
5. Excusable homicide.
6. Verdict of not guilty directed, in case of justifiable and excusable homicide.
7. Killing, without design to effect death, &c., manslaughter in the first degree.
8. Assisting another in self-murder, manslaughter in the first degree.
9. Killing of unborn quick child, manslaughter in the first degree.
10. Administering medicine, or using instrument to destroy quick child, manslaughter in the second degree.
11. Killing in the heat of passion, without a design to effect death, manslaughter in the second degree.
12. Killing any person unnecessarily while resisting attempt to commit felony, &c., manslaughter in the second degree.
13. Killing in heat of passion, without design, &c., in what case manslaughter in the third degree.
14. Killing, whilst person is committing trespass, &c., manslaughter in the third degree.
15. Owner of mischievous animal, which kills a person whilst running at large, deemed guilty of manslaughter in third degree.
16. Person navigating boat or vessel, declared guilty of manslaughter in third degree, when.
17. If captain, engineer, &c., of steamboat, through ignorance or neglect, create steam to burst the boiler, and any person is killed, deemed guilty of manslaughter in third degree.
18. Engineer running engine when not in good repair; punishment for.
19. Master, owner, or engineer of steamboat, running such boat when engine or machinery is out of repair; punishment.
20. If any person is killed by running such engine, &c., deemed manslaughter in third degree.
§ 21. Involuntary killing deemed manslaughter in the fourth degree.
22. Killing, which would at common law be manslaughter, and not excusable or justifiable, deemed manslaughter in the fourth degree.
23. Punishment for manslaughter in the first and second degree.
24. Punishment of manslaughter in the third degree.
25. Punishment of manslaughter in the fourth degree.
26. Rape; punishment for.
27. Carnally knowing a woman over ten years, &c.
28. Compelling a woman to marry, &c.
29. Taking a woman with intent to compel her to marry, &c. Punishment.
30. Taking females under eighteen from parents, &c. Punishment.
31. Rape by negro or mulatto. Punishment.
32. White person aiding such offence. Punishment.
33. Mayhem, &c.; punishment for.
34. Assault with deadly weapon, on purpose, and of malice aforethought, &c. Punishment.
35. Administering poison with intent to kill, where such poison is taken, &c. Punishment.
36. Mingling poison with food, drink, &c.
37. Assault, with intent to commit felony.
38. Persons by whose act, procurement, or negligence, great bodily harm is done; how punished.
39. Medicine admisistered, or instruments used, to procure abortion.
40. Kidnapping, &c.; punishment for.
41. Same subject.
42. Where these offences may be tried.
43. Decoying child under ten years, with intent to conceal, &c.
44. Exposing child under the age of six years, with intent to abandon it, punishment by imprisonment, &c.
45. Disqualifications annexed to conviction of certain offences enumerated in this article.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Murder in the first degree.

SECTION 1. Every murder which shall be committed by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, (*a*) or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery, burglary, or other felony, shall be deemed murder in the first degree.

Murder in the second degree.

SEC. 2. All other kinds of murder at common law, not herein declared to be manslaughter, or justifiable or excusable homicide, shall be deemed murder in the second degree. (*b*)

Punishment for murder in the first and second degrees.

SEC. 3. Persons convicted of murder in the first degree shall suffer death; those convicted of murder in the second degree shall be punished by confinement and hard labor for not less than ten years.

Justifiable homicide.

SEC. 4. Homicide shall be deemed justifiable, when committed by any person in either of the following cases: *First*, in resisting any attempt to murder such person, or to commit any felony upon him or her, or in any dwelling-house in which such person shall be; or, *Second*, when committed in the lawful defence of such person, or of his or her husband or wife, parent, child, master, mistress, apprentice or servant, when there shall be reasonable cause to apprehend a design to commit a felony, or to do some great personal injury, and there shall be immediate danger of such design being accomplished; or, *Third*, when necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot or insurrection, or in lawfully keeping or preserving the peace.

Excusable homicide.

SEC. 5. Homicide shall be deemed excusable when committed by accident or misfortune, in either of the following cases: *First*, in lawfully correcting a child, apprentice, servant or slave, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without unlawful intent; or, *Second*, in the

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(*a*) As to what constitutes a wilful, deliberate, and premeditated killing, see Bower vs. the State, 5 Missouri Rep., 379-80. The court in that case held that, in the word *wilful*, the act meant that the murderer *intended* to kill; that this supposes an actual condition of the mind, in regard to the killing, when the deed takes place; and that the words *deliberate* and *premeditated* require that the killing must have been thought of before the act of killing began to take place, and that, in order to constitute murder in the first degree, there must be a killing with an intent to kill, and do the deed at the time the act took place; and also, that, before the act took place, the murderer intended to do the deed.

(*b*) *Vide*, 3 Inst., 47; 1 Hawk., c. 31, s. 7; Arch., 13; 3 Inst., 48; Fost., 132; 1 Hale, 429; 1 Hale, 431; Leach, 127; 1 Hawk., c. 31, s. 4; 1 Hale, 432; 4 Car. and Payne, 398, 423; 1 Hawk., c. 31, s. 9; 1 Hale, 428; 3 Inst., 50; 1 Hawk., c. 31, s. 16; 1 Hale, 433; Arch., 313, 314; Fost., 257; 4 Black. Com., 201.

heat of passion, upon any sudden or sufficient provocation, or upon sudden combat without any undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel and unusual manner. (c)

Verdict of not guilty directed in case of justifiable or excusable homicide.

Sec. 6. Whenever it shall appear to any jury, upon the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances or in a case where, by any statute, or the common law, such homicide was justifiable or excusable, the jury shall return a general verdict of not guilty.

Killing without design to effect death, &c., manslaughter in the first degree.

Sec. 7. The killing of a human being, without a design to effect death, by the act, procurement or culpable negligence of another, while such other is engaged in the perpetration or attempt to perpetrate any crime or misdemeanor, not amounting to a felony, in cases when such killing would be murder at the common law, shall be deemed manslaughter in the first degree.

Assisting another in self-murder, manslaughter in first degree.

Sec. 8. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter in the first degree.

Killing of unborn quick child, manslaughter in first degree.

Sec. 9. The wilful killing of any unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

Administering medicine, or using instrument to destroy quick child, manslaughter in the second degree.

Sec. 10. Every person who shall administer to any woman, pregnant with a quick child, any medicine, drug, or substance whatsoever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, shall be deemed guilty of manslaughter in the second degree.

Killing in heat of passion, without design, &c.

Sec. 11. The killing of a human being, without a design to effect death, in the heat of passion, but in a cruel or unusual manner, unless it be committed under such circumstances as to constitute excusable or justifiable homicide, shall be deemed manslaughter in the second degree.

Killing person unnecessarily while resisting attempt to commit felony, &c., manslaughter in second degree.

Sec. 12. Every person who shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or do any other unlawful act, after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

(c) *Vide,* 1 Hale, 481, 494, 501, 495, 53, 488, 482, 473, 474; 2 Hale, 118, 119; Arch., 328, 329, 311, 320, 316, 317, 319, 322; 3 Inst., 52, 57; 4 Black. C., 179, 180, 182, 192, 193, 200; 1 Russell, 448, 551; Fost., 318, 271, 273, 277, 258, 261, 262, 263, 299; 1 Hawk., c. 28, s. 11, c. 28, s. 20, c. 29, s. 5; Doug., 359; 6 Barn. & Cress., 635; Car. & Payne, 319; 5 Price, 525; Kel. 40.

Killing in heat of passion, without design, &c., in what case manslaughter in third degree.

SEC. 13. The killing of another, in the heat of passion, without a design to effect death, by a dangerous weapon, in any case, except wherein the killing of another is justifiable or excusable, shall be deemed manslaughter in the third degree. (*d*)

Killing while person is committing trespass, &c., manslaughter in third degree.

SEC. 14. The voluntary killing of a human being, by the act, procurement, or culpable negligence of another, whilst such other person is engaged in the commission of a trespass, or other injury to private rights or property, or engaged in any attempt to commit such injury, shall be deemed manslaughter in the third degree.

Owner of mischievous animal which kills a person, &c., deemed guilty of manslaughter in third degree.

SEC. 15. If the owner of a mischievous animal, knowing its propensities, unlawfully suffer it to go at large, or shall keep it without ordinary care, and such animal, while so at large, or not confined, kill any human being, who shall have taken the precautions which the circumstances may permit to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree.

Person navigating boat or vessel, deemed guilty of manslaughter in third degree, when.

SEC. 16. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such quantity of other lading, that by means thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned, or otherwise killed, such person shall be deemed guilty of manslaughter in the third degree.

If captain, engineer, &c., of steamboat, through ignorance or neglect, create steam, &c., and any person is killed, deemed guilty of manslaughter in third degree.

SEC. 17. If any captain or other person having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create or allow to be created such an undue quantity of steam as to break or burst the boiler, or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person shall be killed, every such captain, engineer, or other person, shall be deemed guilty of manslaughter in the third degree.

Engineer running engine when not in good repair, punishment for.

SEC. 18. Any engineer having charge of a steamboat engine, who shall wilfully or negligently run said engine when it is not in good repair, or any of the machinery connected therewith is in a condition from which explosions or breakages may be reasonably expected, or shall wilfully or negligently fail to report to the master or owner the condition of such engine, or other ma-

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(*d*) See Plummer vs. the State, 6 Missouri Rep., 241-2-3 4.

chinery therewith connected, so being out of repair, or in a condition unsafe for navigation, shall be fined in a sum not less than one hundred nor more than one thousand dollars.

Master, owner or engineer of steamboat, running such boat when engine or machinery is out of repair, punishment for.

SEC. 19. If any master or owner of a steamboat shall make, or cause to be made, a trip with such boat, after the engine or machinery connected therewith shall have been reported to him as unsafe, or out of repair, according to the provisions of the preceding sections, without making adequate repairs; or if any engineer shall wilfully or negligently take charge of and run an engine on such boat, knowing it has been so reported unfit or out of repair, unless in either case the engineer last aforesaid has followed *at* the business of steamboat engineering for five years, and, upon examination of said engine and machinery, shall report upon oath and in writing that said engine and machinery are in good order, such master, owner, or engineer, shall be fined in a sum not less than five hundred dollars; and if any accident happen, by which any person is killed, shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

SEC. 20. If any physician, while in a state of intoxication, shall, without a design to effect death, administer any potion, drug, or medicine, or do any other act to another person which shall produce the death of such other, he shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the fourth degree.

SEC. 21. Th einvoluntary killing of another, by a weapon, or by means neither cruel or unusual, in the heat of passion, in any cases other than justifiable homicide, shall be deemed manslaughter in the fourth degree.

Manslaughter in the fourth degree.

SEC. 22. Every other killing of a human being, by the act, procurement, or culpable negligence of another, which would be manslaughter at the common law, and which is not excusable or justifiable, or is not declared in this article to be manslaughter in some other degree, shall be deemed manslaughter in the fourth degree. (*c*) (3)

Punishment for manslaughter in the first and second degrees.

SEC. 23. Persons convicted of manslaughter in the first and second degrees shall be punished as follows: *First*, if in the

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(*c*) If a person assume to act as a physician, however ignorant of medical science, and prescribe with an honest intention of curing the patient, but, through ignorance of the qualities of the medicine prescribed, or of the nature of the disease, or both, the patient die in consequence of the treatment, contrary to the expectation of the person prescribing, he is not guilty of murder or manslaughter. But if the party prescribing have so much knowledge of the fatal tendency of the prescription, that it may be reasonably presumed that he administered the medicine from an obstinate, wilful rashness, and not with an honest intention and expectation of effecting a cure, he is guilty of manslaughter at least, though he might not have intended any bodily harm to the patient. Rice vs. the State; 8 Missouri Rep., 561.

(3) *Vide*, 4 Black. Com. 191; Fost. 295, 296, 297, 290, 291, 296, 308, 312, 819, 320, 321; 3 East, 581; 1 East, P. C., 245, 270; 1 Hale, 453, 466, 422, 452, 486, 455, 457, 459, 450 616; Leach 151; 1 Kel., 135; Arch., 318, 319, 324, 326, 327.

first degree, by confinement and hard labor for a term not less than five years; *second*, if in the second degree, by confinement and hard labor for a term not less than three, nor more than five years.

Punishment for manslaughter in the third degree.

SEC. 24. Every person convicted of manslaughter in the third degree shall be punished by confinement and hard labor for a term not exceeding three years, or by imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Punishment for manslaughter in the fourth degree.

SEC. 25. Every person convicted of manslaughter in the fourth degree shall be punished by confinement and hard labor for two years, or by imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Rape; its punishment

SEC. 26. Every person who shall be convicted of rape, either by carnally and unlawfully knowing any female child under the age of ten years, or by forcibly ravishing any woman of the age of ten years or upwards, shall be punished by confinement and hard labor not less than five years. (4)

Carnally knowing a woman over ten years, &c.

SEC. 27. Every person who shall have carnal knowledge of any woman above the age of ten years, without her consent, by administering to her any substance or liquid which shall produce such stupor, or such imbecility of mind or weakness of body as to prevent effectual resistance, shall, upon conviction, be adjudged guilty of rape, and be punished as in the last section specified.

Compelling a woman to marry, &c.

SEC. 28. Every person who shall take any woman unlawfully, against her will, and by force, menace or duress, compel her to marry him, or to marry any other person, or to be defiled, upon conviction thereof shall be punished by confinement and hard labor for a term of not less than five years.

Taking a woman with intent to compel her to marry, &c.

SEC. 29. Every person who shall take any woman, unlawfully, against her will, with intent to compel her by force, menace or duress, to marry him, or to marry any other person, or to be defiled, upon conviction thereof shall be punished by confinement and hard labor not exceeding five years.

Taking females under the age of eighteen years from parents, &c.

SEC. 30. Every person who shall take away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of prostitution or concubinage, shall, upon conviction thereof, be punished by confinement and hard labor for a term not exceeding five years.

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(4) *Vide*, 2 Inst., 180; 1 Hawk., c 41, s 1; 1 Hale, 630, 629; Starkie, 137, 1269, 1270; 1 East, P. C., 444.

Rape by negro or mulatto.

Sec. 31. If any negro or mulatto shall either, *first*, commit, or attempt to commit, a rape on a white female, as hereinbefore declared; or, *second*, by force, menace or duress, compel, or attempt to compel, any white female to marry him, or any negro or mulatto to be defiled by him, or another negro or mulatto; or, *third*, marry or defile, or attempt to defile, any white female who shall have been compelled thereto by force, menace or duress, employed or used by him or any other; or, *fourth*, take away any white female under the age of eighteen years, as specified in the last preceding section, for the purpose of prostitution, concubinage, or marriage with him, or any other negro or mulatto, he shall, on conviction, instead of the punishment declared in the preceding section, be sentenced to castration, to be performed under the direction of the sheriff, by some skilful person, and the expense shall be adjusted, taxed and paid as other costs.

White person aiding such offence.

Punishment.

Sec. 32. If any person other than a negro or mulatto shall aid or assist any negro or mulatto in the commission of any of the offences specified in the last section, he shall, on conviction, be punished in the same manner, and to the same extent, as declared in the twenty-sixth section of this article.

Mayhem, &c., punishment for.

Sec. 33. Every person who shall, on purpose and of malice aforethought, cut or bite off the ear, or cut or disable the tongue, put out an eye, or slit, cut, or bite off the nose or lip, or shall cut off or disable any limb or member of any person, with intent to kill, maim or disfigure such person, shall, on conviction, be punished by confinement and hard labor for a term not less than five, nor exceeding ten years.

Assault with deadly weapon, on purpose and of malice aforethought, &c.

Punishment.

Sec. 34. Every person who shall, on purpose and of malice aforethought, shoot at or stab another, or assault or beat another with a deadly weapon, or by any other means or force likely to produce death or great bodily harm, with intent to kill, maim, ravish or rob such person, or in the attempt to commit any burglary or other felony, or in resisting the execution of legal process, shall be punished by confinement and hard labor for a term not exceeding ten years. (*d*)

(*d*) An indictment under this section must use the words—"on purpose, and of malice aforethought;" charging that defendant "unlawfully, feloniously, and with malice aforethought," did shoot at, &c., held insufficient. State vs. Comfort, 4 Missouri Rep., 357. The intent may be charged in the words of the act, and it need not be charged "with intent feloniously to kill."—*Ibid.* An assault with intent to commit a rape, under this section, must be charged and proved to have been done "with deadly weapon," or the means likely to produce great bodily harm. Humphries vs. the State; 5, *Ibid*, 203.

Administering poison with intent to kill, where such poison is taken, &c., punishment.

SEC. 35. Every person who shall administer to another, directly or indirectly, any poison, or any poisonous substance or liquid, or shall mingle poison with any food, drink, or medicine, with intent to kill such person, which shall be actually taken by such person or another, whereof death shall not ensue, shall be punished by confinement and hard labor not less than five nor more than ten years.

Mingling poison with food, drink, &c.

SEC. 36. Every person who shall mingle any poison with any food, drink, or medicine, with intent to kill or injure any human being, or who shall wilfully poison any spring, well, or reservoir of water, shall, upon conviction, be punished by confinement and hard labor not exceeding five years.

Assault with intent to commit a felony.

SEC. 37. Every person who shall be convicted of an assault, with an intent to commit any robbery, rape, burglary, manslaughter or other felony, the punishment for which assault is not hereinbefore prescribed, shall be punished by confinement and hard labor not exceeding five years, or by imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months. (*e*)

Persons by whose act, &c., great bodily harm is done, how punished.

SEC. 38. If any person shall be maimed, wounded, or disfigured, or receive great bodily harm, or his life be endangered by the act, procurement, or culpable negligence of another, in cases and under circumstances which would constitute murder or manslaughter if death had ensued, the person by whose act, procurement, or negligence, such injury or danger of life shall be occasioned, shall, in cases not otherwise provided for, be punished by confinement and hard labor not exceeding five years, or in a county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in a county jail not less than three months.

Medicines or instruments used to produce abortion.

SEC. 39. Every physician or other person who shall wilfully administer to any pregnant woman any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and pun-

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(*e*) An assault, with intent to commit a rape, on a female child under the age of ten years, whether consenting or not, if made without deadly weapons, is indictable under this section. State vs. Humphries, 5 Missouri Rep., 203. An assault, "with intent to kill," held good under this section. State vs. Johnson, 5 *Ibid*, p. 620. *Sed quære.*

ished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Kidnapping, &c., punishment for.

Sec. 40. Every person who shall, without lawful authority, forcibly seize and confine, or shall inveigle, decoy, or kidnap any other person with intent, *First*, to cause such person to be sent or taken out of the territory, or to be secretly confined within the same against his will; or, *Second*, to cause such person to be sold as a slave, or in any way held to service against his will, shall, upon conviction, be punished by confinement and hard labor not exceeding ten years.

Kidnapping, &c.

Sec. 41. Every person who shall kidnap, or forcibly or fraudulently carry or decoy out of this territory, or shall sell, or in any manner transfer, as a slave or servant, any free person or persons entitled to freedom, so taken, decoyed or kidnapped, knowing such person to be free or entitled to freedom, shall upon conviction be punished by confinement and hard labor for a term, not exceeding ten years.

Punishment.

Where these offences may be tried.

Sec. 42. Every offence prohibited in either of the two last sections, may be tried in the county through which the person so seized, inveigled, decoyed, kidnapped or sold, shall have been taken, carried or brought.

Decoying child under the age of ten years, with intent to conceal, &c.

Sec. 43. Every person who shall maliciously, forcibly or fraudulently lead, take or carry away, or decoy, or entice away, any child under the age of twelve years, with intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child, shall, upon conviction, be punished by confinement and hard labor, not exceeding five years, or imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars.

Punishment.

Exposing child under six years of age, with intent to abandon.

Sec. 44. If any father or mother of any child shall have been confided, shall expose such child in a street, field, or other place, with intent wholly to abandon it, he or she shall, upon conviction, be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months.

Disqualification annexed to conviction of certain offences enumerated in this article.

Sec. 45. Every person who shall be convicted of murder, or rape, or of manslaughter in the first degree, or who shall be sentenced to imprisonment and hard labor for any of the offences specified in the twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-second, thirty-fifth, thirty-sixth, fortieth, forty-first, forty-third and forty-fourth sections of this act, shall be forever disqualified from voting at any election, or holding any office of honor, profit or trust, within this territory, and shall, moreover, be rendered incompetent to be a juror in any case.

This act to take effect and be in force from and after its passage.

CHAPTER 49.

An Act defining the punishment of crimes affecting property, public and private.

§ 1. Arson in the first degree.
2. What house deemed a dwelling-house.
3. Setting fire to dwelling-house, &c., in day time, arson in the second degree.
4. Setting fire to warehouse, office, &c., in day time, arson in the second degree.
5. Setting fire to or burning building in which public records are kept, arson in the second degree.
6. Arson in the third degree.
7. Setting fire to or burning barn, or stable, &c., in the night time, arson in the third degree.
8. Setting fire to, or burning brewery, &c., in night time, arson in the third degree.
9. Setting fire to, or burning vessel, goods, &c., insured, arson in the third degree.
10. Arson in the fourth degree.
11. Setting fire to or burning, in the day or night time, goods, &c., not subject of arson in third degree, arson in fourth degree.
12. Punishment for arson in every degree.
13. Burglary in the first degree.
14. Breaking dwelling-house in day time, burglary in the second degree.
15. Breaking dwelling-house in the night time, &c., burglary in the second degree.
16. Entering dwelling-house by day or night, with intent, &c., and shall commit a felony, burglary in the second degree.
17. Breaking inner door with intent to commit a felony, burglary in the second degree.
18. Person admitted into dwelling-house with consent, and break inner door with intent, &c., burglary in the second degree.
19. What deemed a dwelling-house within the meaning of these sections.
§ 20. Other instances of burglary in the second degree.
21. Burglary in the third degree.
22. Breaking out of a house, or the inner door, when not deemed burglary.
23. Punishment for burglary.
24. Burglary and larceny, both committed at the same time, how punished.
25. Robbery in the first degree.
26. Robbery in the second degree.
27. Robbery in the third degree.
28. Punishment for robbery.
29. Threatening letters sent with a view to extort money, deemed an attempt to rob; how punished.
30. Grand larceny.
31. Punishment for grand larceny.
32. Petit larceny, punishment for.
33. Larceny in a dwelling-house, boat or vessel, or by stealing from the person in the night time; how punished.
34. What deemed the value of certain paper securities stolen.
35. Marking, altering the mark, or killing the animal of another, deemed larceny; how punished.
36. Stealing or embezzling will or other instrument affecting real or personal property, grand larceny; how punished.
37. Stealing or embezzling any record or other instrument filed in proper office, grand larceny; how punished.
38. Officers having the custody of papers specified in the two preceding sections, withdrawing or destroying such papers, how punished.
39. Severing from the soil, buildings, gates, &c., and converting to one's own use the thing severed, declared larceny.
40. Embezzling by clerks, servants, agents, &c., how punished.
41. Embezzlement of evidence of debt negotiable by delivery only; punishment.

§ 42. Embezzlement by carriers or other bailees, how punished.
43. Embezzling or purloining by tenant or lodger, how punished.
44. Buying or receiving stolen property knowingly, how punished.
45. Conviction of principal not necessary in offence specified in the last section.
46. Obtaining money or property by false tokens or pretences.
47. Punishment increased when the false token is a promissory note, purporting to be issued by a bank not in existence.
48. Defendant in indictment under last two sections may be convicted of larceny.
49. Money obtained by personating another, deemed stealing.
50. Parties and privies to fraudulent conveyances, how punished.
51. Executing a second deed fraudulently without reciting the first.
52. Maliciously destroying or injuring boat or vessel, with intent to prejudice the owner or owners, how punished.
§ 53. Administering or exposing poison cattle, punishment.
54. Maliciously killing, wounding, &c., the cattle of another, how punished.
55. Malicious trespass upon dwelling-house, gate, fence, &c., deemed a misdemeanor.
56. Malicious destruction of, or injury to, raft of lumber, wood, &c., deemed a misdemeanor.
57. Malicious injury to mill-dams, bridges, &c., deemed a misdemeanor.
58. Removing, defacing, or altering landmarks, deemed a misdemeanor.
59. Removing, defacing, or destroying mile-stones, &c., deemed a misdemeanor.
60. What shall be deemed *malice*, within the meaning of the eight preceding sections.
61. Misdemeanors mentioned in this article, punishment by imprisonment in county jail, &c.
62. Disqualifications annexed to certain offences specified in this article.
63. Construction to mean confinement to hard labor.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Arson in the first degree.

SECTION. 1. Every person who shall set fire to or burn, in the night time, any dwelling-house in which there shall be at the time some human being, or who shall wilfully set fire to or burn, in the night time, any boat or vessel in which there shall be at the time some human being, shall, upon conviction, be adjudged guilty of arson in the first degree. (5)

What shall be deemed a dwelling-house.

SEC. 2. Every house, prison, jail, or other edifice, which shall have been usually occupied by persons lodging therein at night, shall be deemed a dwelling-house of any person having charge thereof, or so lodging therein; but no warehouse, barn, shed, or other out-house, shall be deemed a dwelling-house, or part of a dwelling-house, within the meaning of this or the last section, unless the same be joined to, or immediately connected with, and part of a dwelling-house.

Setting fire to dwelling, &c., arson in the second degree.

SEC. 3. Every person who shall wilfully set fire to or burn, in the day time, any inhabited dwelling-house, boat or vessel, which, if done in the night time, would be arson in the first degree, shall, upon conviction, be adjudged guilty of arson in the second degree.

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(5) *Vide*, 4 Black. Com., 220, 221, 222; 1 Hale, 567; 2 East., P. C., 1031; Fost., 258; Arch., 259.

SEC. 4. Every person who shall wilfully set fire to or burn, in the night time, any shop, warehouse, office, storehouse, or other building, not being the subject of arson in the first degree, but adjoining to, or within the curtilage of any inhabited dwelling-house, so that such dwelling-house shall be endangered by such firing, shall, upon conviction, be adjudged guilty of arson in the second degree.

Setting fire to warehouse, &c., arson in the second degree.

SEC. 5. Every person who shall wilfully set fire to or burn, in the night time, any building in which shall be kept or deposited at the time, any records, or the papers of any public officer, shall, on conviction, be adjudged guilty of arson in the second degree.

Setting fire to or burning building in which public records are kept, &c.

SEC. 6. Every person who shall wilfully set fire to or burn, in the day time, any shop, warehouse, or other building, which, if done in the night time, would be arson in the second degree, shall, on conviction, be adjudged guilty of arson in the third degree.

Arson in the third degree.

SEC. 7. Every person who shall wilfully set fire to or burn, in the night time, any house, building, barn, stable, boat or vessel of another, or any house of public worship, college, academy, or school house, or building used as such, or any public building belonging to the United States or this territory, or to any county, city, town or village, not the subject of arson in the first or second degree, shall, on conviction, be adjudged guilty of arson in the third degree.

Setting fire to or burning barn or stable, &c., in the night time, arson in the third degree.

SEC. 8. Every person who shall wilfully set fire to or burn, in the night time, any brewery, distillery, grist mill, paper mill, fulling mill, saw mill, carding machine, or other machinery for manufacturing purposes, or any building containing the same, or erected or used as a manufactory, shall, on conviction, be adjudged guilty of arson in the third degree.

Setting fire to or burning brewery, &c., in night time, arson in the third degree.

SEC. 9. Every person who shall burn any building, boat or vessel, or any goods, wares, or merchandise, or other chattels, which shall, at the time, be insured against loss or damage by fire, with intent to defraud or prejudice the insurer, whether the same be the property of such person or any other, shall be, upon conviction, adjudged guilty of arson in the third degree.

Setting fire to or burning vessel, goods, &c., insured, arson in the third degree.

SEC. 10. Every person who shall, in the day time, wilfully set fire to or burn any dwelling-house or other building, or any machine, or any boat or vessel, which, if done in the night time, would be arson in the third degree, shall, upon conviction, be adjudged guilty of arson in the fourth degree.

Arson in the fourth degree.

SEC. 11. Every person who shall, in the day or night time, wilfully set fire to or burn any goods, wares, merchandise, or

Setting fire to, &c., in the day or night time, goods, Wares, &c., not subject of arson in third degree, declared arson in the fourth degree.

other chattels of another, not the subject of arson in the third degree, or any stack of grain, of any kind, belonging to another, or any grain, grass, or herbage, growing or standing in the field, or any nursery or orchard of fruit trees, or any fence, belonging to another, or any toll bridge or other public bridge, shall, on conviction, be adjudged guilty of arson in the fourth degree.

Punishment of arson.

First degree.

Second degree.

Third degree.

Fourth degree.

Sec. 12. Every person who shall be convicted of any degree of arson shall be punished, by confinement to hard labor, as follows: *First*, in the first degree, by confinement to hard labor not less than ten years; *Second*, in the second degree, by confinement to hard labor, not less than seven nor exceeding ten years; *Third*, in the third degree, by confinement to hard labor, not less than five nor more than seven years; *Fourth*, in the fourth degree, by confinement to hard labor not more than four years, or by imprisonment in the county jail not less than six months.

Burglary in the first degree.

Sec. 13. Every person who shall be convicted of breaking into and entering, in the night time, the dwelling-house of another, in which there shall be at the time some human being, with intent to commit some felony, or any larceny therein, either, *First*, by forcibly bursting or breaking the wall or any outer door, window, or shutter of a window of such house, or the lock or bolt of such door, or the fastening of such window or shutter; or, *Second*, by breaking, in any other manner, being armed with some dangerous weapon, or with the assistance and aid of one or more confederates then actually present aiding and assisting; or, *Third*, by unlocking an outer door by means of false keys, or by picking the lock thereof, shall be adjudged guilty of burglary in the first degree. (6)

Breaking dwelling, &c., in day time, &c., burglary in the second degree.

Sec. 14. Every person who shall be convicted of breaking into a dwelling-house in the day time, under such circumstances as would have constituted the crime of burglary in the first degree if committed in the night time, shall be deemed guilty of burglary in the second degree.

Breaking dwelling house in the night time, &c., burglary in the second degree

Sec. 15. Every person who shall be convicted of breaking into a dwelling-house in the night time, with intent to commit a felony or any larceny, but under such circumstances as shall not constitute the offence of burglary in the first degree, shall be deemed guilty of burglary in the second degree.

Entering dwelling house by day or night, with intent, &c., and shall commit a felony, burglary in second degree.

Sec. 16. Every person who shall enter into the dwelling-house of another, by day or night, in such manner as not to constitute any burglary as hereinbefore specified, with intent to commit a felony or any larceny, or being in the dwelling-house of another, shall commit a felony or any larceny, and shall, in the night time, break any outer door, window, or shutter of a window, or any other part of said house, to get out of the same, shall be adjudged guilty of burglary in the second degree.

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(6) *Vide*, 3 Inst., 63; 4 Black. Com., 224, 228; 1 Hale, 547, 566, 553, 552, 555, 562; 1 Hawk., c. 38, s. 5—13; 2 East, P.C. 52.

Breaking inner door with intent to commit a felony, burglary in the second degree.

SEC. 17. Every person who, having entered the dwelling-house of another in the night time, through an open outer door or window, or other aperture not made by such person, shall break an inner door of the same house with intent to commit any felony or larceny, shall be adjudged guilty of burglary in the second degree.

Person, &c. breaking inner door, with intent, &c., burglary in second degree.

SEC. 18. Every person who, being admitted into any dwelling-house with the consent of the occupant thereof, or who, being lawfully in such house, shall in the night time break an inner door with intent to commit a felony or larceny, shall be adjudged guilty of burglary in the second degree.

What deemed a dwelling-house, or part thereof, under this act.

SEC. 19. No building shall be deemed a dwelling-house, or any part of a dwelling-house, within the meaning of the foregoing provisions, unless the same be joined to, immediately connected with, and a part of, a dwelling-house.

Persons convicted of certain offences, declared guilty of burglary in the second degree.

SEC. 20. Every person who shall be convicted of breaking and entering in the night time, *First*, any building within the curtilage of a dwelling-house, but not forming a part thereof; or, *Second*, any shop, store, booth, tent, warehouse, or other building, or any boat or vessel, in which there shall be, at the time, some human being, or any goods, wares, or merchandise, or other valuable thing kept or deposited, with intent to steal or commit any felony therein, shall, on conviction, be adjudged guilty of burglary in the second degree.

Burglary in the third degree.

SEC. 21. Every person who shall be convicted of breaking and entering, in the day time, any dwelling-house or other building, or any shop, store, booth, tent, boat or vessel, under such circumstances as would have constituted the offence of burglary in the second degree if committed in the night time, shall be deemed guilty of burglary in the third degree.

Breaking out of dwelling-house, &c., not deemed a burglary, when.

SEC. 22. The breaking out of any dwelling-house, or the breaking of the inner door thereof, by any person being therein, shall not be deemed such breaking a dwelling-house as to constitute burglary in any case other than such as are herein particularly specified.

Punishment for burglary.

SEC. 23. Every person who shall be convicted of burglary shall be punished by confinement and hard labor, if in the first degree, not less than ten years; if in the second degree, not less than five nor more than ten years; if in the third degree, not exceeding five years.

Burglary and larceny both committed at the same time, how punished.

SEC. 24. If any person, in committing burglary, shall also commit a larceny, he may be prosecuted for both offences in the same count, or in separate counts of the same indictment, and, on conviction of such burglary and larceny, shall be punished by confinement and hard labor, in addition to the punishment herein before prescribed for the burglary, not exceeding five years.

Robbery in the first degree.

SEC. 25. Every person who shall be convicted of feloniously taking the property of another from his person or in his presence, and against his will, by violence to his person, or by putting him in fear of some immediate injury to his person, shall be adjudged guilty of robbery in the first degree. (7)

Robbery in the second degree.

SEC. 26. Every person who shall be convicted of feloniously taking the personal property of another in his presence, or from his person, which shall have been delivered or suffered to be taken through fear of some injury to his person or property, or to the person of any relative or member of his family, threatened to be inflicted at some different time, which fear shall have been produced by the threats of the person so receiving or taking such property, shall be adjudged guilty of robbery in the second degree.

Robbery in the third degree.

SEC. 27. If any person shall, either verbally or by a written or printed communication, accuse or threaten to accuse another of any felony, or threaten to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any description belonging to another, and shall, by intimidating him with said accusation or threat, extort or gain from him any money or property, every such offender shall be deemed guilty of robbery in the third degree.

Punishment for robbery.

SEC. 28. Every person convicted of robbery shall be punished by confinement and hard labor, if in the first degree, not less than ten years; if in the second degree, not exceeding ten nor less than five years; if in the third degree, not exceeding five years.

Threatening letters sent with a view to extort money, deemed an attempt to rob, how punished.

SEC. 29. Every person who shall knowingly send or deliver, or shall make, and for the purpose of being delivered or sent, shall part with the possession of any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or other designation, threatening therein to accuse any person of a crime, or to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any description belonging to another, shall, on conviction, be adjudged guilty of an attempt to rob, and shall be punished by confinement and hard labor not exceeding five years.

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(7) *Vide*, 4 Black. Com., 242, 243; 1 Hawk., c. 34, s. 3, s. 8; Russ. & Ry., 375, 419; Russ., 87; Arch., 217.

Grand larceny defined.

SEC. 30. Every person who shall be convicted of feloniously stealing, taking, and carrying away any money, goods, right in action, or other personal property, or valuable thing whatsoever, of the value of ten dollars or more, or any slave, horse, mare, gelding, colt, filly, ass, mule, neat cattle, sheep, or hog, belonging to another, shall be deemed guilty of grand larceny. (8)

Punishment for grand larceny.

SEC. 31. Persons convicted of grand larceny shall be punished, in the following cases, as follows: *First*, for stealing a horse, mare, gelding, colt, filly, mule, or ass, by confinement and hard labor not exceeding seven years; *Second*, in all cases of grand larceny, except as provided in the two succeeding sections, by confinement and hard labor not exceeding five years.

Petty larceny, punishment for.

SEC. 32. Every person who shall steal, take, and carry away any money or personal property, or effects of another, under the value of ten dollars, (not being the subject of grand larceny, without regard to value,) shall be deemed guilty of petty larceny, and, on conviction, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. (9)

Larceny in a dwelling-house, how punished.

SEC. 33. If any larceny be committed in a dwelling-house, or in any boat or vessel, or by stealing from the person in the night time, the offender may be punished by confinement and hard labor not exceeding seven years.

What deemed the value of certain paper securities stolen.

SEC. 34. If the property stolen consists of any bond, covenant, note, bill of exchange, draft, order, or receipt, or any other evidence of debt, or of any public security issued by the United States or this territory, or of any instrument whereby any demand, right, or obligation shall be assigned, transferred, created, increased, released, extinguished or diminished, the money due thereon, or secured thereby, and remaining unsatisfied, which, in any event or contingency, might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be deemed *prima facie* evidence of the value of the article stolen.

Marking, altering the mark or killing the animal of another, deemed larceny, how punished.

SEC. 35. If any person mark or brand, or alter the mark or brand of any animal, the subject of larceny, being the property of another, with intent to steal or convert the same to his own use, or shall wilfully kill such animal with intent to steal or convert to his own use the carcase, or skin, or any part of the animal so killed, he shall be adjudged guilty of larceny, and punished in the same manner as if he had feloniously stolen such animal.

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(8) *Vide* Black. Com., 229, 237, 231; 1 Hale, 513, 506, 508, 509, 511, 512; Arch., 168, 169, 177, 173, 175, 179, 178, 167, 161; 2 East., P. C., 568, 682, 556; 1 Leach, 420.

(9) *Vide*. The State vs. Hurt, and The State vs. Sights; 7 Missouri Rep., 321.

Stealing or embezzling will or other instrument affecting real or personal property, grand larceny, how punished.

Sec. 36. If any person steal or embezzle any will of real or personal property, or any deed, or other instrument of writing, being, or purporting to be, the act of another, by which any right or interest in real or personal property shall be, or purport to be, assured, transferred, or conveyed, or in any way changed or affected, shall be adjudged guilty of grand larceny, without reference to the value of the instrument so stolen or embezzled, and shall be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months, or by fine not exceeding one thousand dollars or less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Stealing or embezzling any record or other document filed in proper office, grand larceny; how punished.

Sec. 37. Whoever shall be convicted of having stolen and carried away, or embezzled, any record, paper, or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, document, or record, filed or deposited in any public office, or with any judicial officer, shall be adjudged guilty of grand larceny, without reference to the value of the record, paper, document, or proceeding so stolen or embezzled, and shall be punished by confinement and hard labor not exceeding five years, or in a county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Officers having the custody of papers, &c., withdrawing or destroying the same, how punished.

Sec. 38. Every officer or other person having the custody of any record, paper, document, or proceeding, or any will, deed, or other writing, specified in either of the last two sections, who shall fraudulently take away, withdraw or destroy any such record, paper, document, proceeding, will, deed, or instrument of writing, filed or deposited with him, or left in his custody, shall, upon conviction, be punished by confinement and hard labor not exceeding five years.

Severing produce, &c., from the soil and converting to one's own use, declared larceny.

Sec. 39. If any person shall sever from the soil of another any produce growing thereon, of the value of more than five dollars, or shall sever from any building, or from any gate, fence, or other railing, or enclosure, or any part thereof, or any material of which it is composed, of the like value, and shall take and convert the same to his own use, with the intent to steal the same, he shall be deemed guilty of larceny in the same manner, and of the same degree, as if the articles so taken had been severed at some different and previous time.

Embezzling by clerks, servants, agents, &c., how punished.

SEC. 40. If any clerk, apprentice, or servant of any private person, or of any co-partnership, (except clerks, apprentices, and servants within the age of sixteen years,) or if any officer, agent, (*f*) clerk, or servant of any incorporated company, or any person employed in any such capacity, shall embezzle or convert to his own use, or shall take, make way with, or secrete with intent to embezzle or convert to his own use, without the assent of his master or employer, any money, goods, rights in action, or valuable security or effects whatsoever, belonging to any person, which shall have come into his possession, or under his care, by virtue of such employment or office, he shall, upon conviction, be punished in the manner prescribed by law for stealing property of the kind or value of the articles so embezzled, taken, or secreted.

Embezzlement of evidence of debt negotiable by delivery only, punishment.

SEC. 41. Every embezzlement of any evidence of debt, negotiable by delivery only, and actually executed by the master or employer of such clerk, agent, officer, or servant, but not delivered or issued as a valid instrument, shall be deemed an offence within the meaning of the last preceding section, and punished accordingly.

Embezzlement by carriers or other bailees, how punished.

SEC. 42. If any carrier or other bailee (*g*) shall embezzle or convert to his own use, or make way with, or secrete with intent to embezzle or to convert to his own use, any money, goods, rights in action, property, or valuable security, or other effects, which shall have been delivered to him, or shall have come into his possession, or under his care, as such bailee, although he shall not break any trunk, package, box, or other thing in which he received them, he shall, upon conviction, be adjudged guilty of larceny, and punished in the manner prescribed by law for stealing property of the nature or value of the articles so embezzled, taken, or secreted.

Embezzlement by tenant or lodger, how punished.

SEC. 43. If any tenant or lodger shall take away, with intent to embezzle, steal or purloin, any bedding, furniture, goods or chattels, or fixture, which, by contract, was let to him, to be used by him in or with any house, apartment, room or lodging, whether the contract for letting shall have been made by such person or by any person on his behalf, he shall be adjudged guilty of lar-

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(*f*) An agent or bailee of a private incorporated company is not liable under this section, but may be indicted under the forty-fifth section; Hamuel vs. The State. 5 Missouri Rep., 264.

(*g*) An indictment charging defendant as agent, will not be good under this section; he must be charged as a bailee. Hamuel vs. The State, 5 Missouri Rep., 264. The words "other bailee," held to embrace a case of bailment of a horse, notwithstanding the clause referring to the "box, trunk, package, or other things," in which property bailed was enclosed, would seem to limit the section to bailments of that character. Norton vs. The State, 4 *Ibid*, p. 61. *Sed quære.*

ceny, and punished in the same manner prescribed by law for stealing property of the value of the articles so stolen, purloined, or embezzled.

Buying or receiving stolen property knowingly, how punished.

SEC. 44. Every person who shall buy or in any way receive any goods, money, right in action, personal property, or any valuable security or effects whatsoever, that shall have been embezzled, taken or secreted, contrary to the provisions of the four last sections, or that shall have been stolen from another knowing the same to have been so embezzled, taken, or secreted, or stolen, shall, upon conviction, be punished in the same manner and to the same extent as for the stealing the money, property or other thing so bought or received.

Conviction of principal not necessary in said offence.

SEC. 45. In any indictment for any offence specified in the last section, it shall not be necessary to aver, nor on the trial thereof to prove, that the principal who embezzled, took, secreted, or stole such property, has been convicted.

Obtaining money or property by false tokens, or pretences.

Punishment.

SEC. 46. Every person who, with intent to cheat or defraud another, shall designedly, by color of any false token, or writing, or by any other false pretence, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, right in action, or other valuable thing or effects whatsoever, upon conviction thereof, shall be punished in the same manner and to the same extent as for feloniously stealing the money, property or thing so obtained.

Punishment increased when the false token is a promissory note, purporting to be issued by a bank not in existence.

SEC. 47. If the false token by which any signature, money, property, right in action or other thing shall be obtained, as specified in the last section, be a promissory note, bill of exchange, check, or evidence of debt, purporting to have been made or issued by or under authority of any banking company or corporation not in existence, the person convicted of such cheat may be punished by confinement and hard labor not exceeding seven years.

Defendant in indictment under two last sections, may be convicted of larceny.

SEC. 48. If, upon the trial of any person indicted for any offence prohibited in the two last sections, it shall be proved that he obtained the property, or other thing in question, in such manner as to amount in law to a larceny, he shall not, by reason thereof, be entitled to an acquittal, but he shall be convicted and punished as if the offence had been proved as charged.

Money obtained by personating another, deemed stealing.

SEC. 49. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money, goods, rights in action, or property, or effects of any description, belonging or intended to be delivered to the individual so personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money, property, or other thing so received.

SEC. 50. Every person who, being a party to any conveyance or assignment of any estate, or interest in real estate, goods or things in action, of any rents or profits issued therefrom, or to any charge upon such estate, interest, rents, or profits, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of any such conveyance, assignment, or charge, who shall willingly put the same in use, as having been made in good faith, shall, upon conviction, be adjudged guilty of a misdemeanor.

Parties and privies to fraudulent conveyances, how punished.

SEC. 51. Every person who shall make, execute or deliver any deed or writing for the conveyance or assurance of any lands, tenements or hereditaments, goods or chattels, which he had previously, by deed or writing, sold, conveyed, mortgaged or assured, or covenanted to convey or assure, to any other person, such first deed being outstanding and in force, and shall not in such second deed or writing recite or describe such former deed or writing, or the substance thereof, with intent to defraud, and every person who shall knowingly take or receive such second deed or writing, shall, on conviction, be adjudged guilty of a misdemeanor.

Executing a second deed fraudulently, without reciting the first, a misdemeanor.

SEC. 52. If any person shall unlawfully and maliciously destroy or injure any boat or vessel, or any engine or machinery for propelling the same, whether the same be completed or in an unfinished state, or shall unlawfully or maliciously cast away or strand, or in anywise injure any boat or vessel, with intent thereby to injure or prejudice any owner or part owner of such boat or vessel, or of any goods on board the same, or the insurer of such boat or vessel, or on the freight thereof, or upon any goods on board the same, the person so offending shall be punished by confinement and hard labor not exceeding seven years.

Maliciously destroying or injuring boat or vessel, with intent to prejudice the owners, how punished.

SEC. 53. Every person who shall wilfully administer any poison to any cattle, or shall maliciously expose any poisonous substance, with intent that the same shall be taken or swallowed by any cattle, shall, upon conviction, be punished by confinement and hard labor not exceeding three years, or in the county jail not less than six months, or by fine not less than two hundred and fifty dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Administering or exposing poison to cattle, punishment.

SEC. 54. If any person shall wilfully and maliciously kill, maim or wound any cattle of another, he shall, on conviction, be punished as in the next preceding section is provided.

Maliciously killing, &c., cattle, how punished.

SEC. 55. Every person who shall wilfully, unlawfully and maliciously break, destroy or injure the door or window of any

Malicious trespass upon dwelling-house, gate, fence,

&c., deemed a misdemeanor.

dwelling-house, shop, store, or other house or building, or sever therefrom, or from any gate, fence or enclosure, or any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof or any thing attached thereto, or pull down, injure or destroy any gate, post, railing or fence, or any part thereof, or cut down, lap, girdle or otherwise injure or destroy any fruit, or ornamental or shade tree, being the property of another, shall, on conviction, be adjudged guilty of a misdemeanor.

Malicious destruction, &c., of raft or lumber, wood, &c., deemed a misdemeanor.

SEC. 56. Every person who shall wilfully and maliciously burn, injure or destroy any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel, being the property of another, shall be adjudged guilty of a misdemeanor.

Malicious injury to mill dams, bridges, &c., deemed a misdemeanor.

SEC. 57. Every person who shall wilfully and maliciously cut down, injure, break or destroy any bridge or mill-dam, or other dam erected to create hydraulic power, or any embankment necessary to support such dam, or shall wilfully or maliciously make, or cause to be made, any aperture in such dam or embankment, with intent to destroy or injure the same, shall be adjudged guilty of a misdemeanor.

Removing, defacing or altering land marks, deemed a misdemeanor.

SEC. 58. Every person who shall wilfully and maliciously either, *First*, remove any monument of stone, or other durable material, created for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or of the territory, or any legal subdivision thereof; or, *Second*, deface or alter the marks upon any tree, post, or other monument, made for the purpose of designating any point in such boundary; or, *Third*, cut down or remove any tree upon which any such marks shall be made for such purpose, with intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor.

Removing, defacing or destroying mile stones, &c., deemed a misdemeanor.

SEC. 59. Every person who shall wilfully or maliciously break or destroy, or remove, any mile post, mile stone, or any guide board, erected by authority of law, on any public highway or turnpike road, or shall wilfully and maliciously deface or alter any such inscription on any such post, stone, or board, shall be deemed guilty of a misdemeanor.

What shall be deemed malice within the meaning of the eight preceding sections.

SEC. 60. Every punishment and forfeiture imposed on any person maliciously committing any offence prohibited by the provisions of either of the eight last preceding sections, shall equally apply, and be in force, whether the offence shall be committed from malice conceived against the owner of the property, in respect to which it shall be committed, or otherwise.

Misdemeanors mentioned in this act, how punished.

SEC. 61. Every person who shall be convicted of a misdemeanor, as prohibited by this act, the punishment for which is not hereinbefore prescribed, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Disqualifications annexed to certain offences specified in this act

SEC. 62. Every person who shall be convicted of arson, burglary, robbery, or larceny, in any degree in this act specified, or who shall be sentenced to confinement and hard labor for any other crime punishable under the provisions of this act, shall be incompetent to be sworn as a witness, or serve as a juror, in any cause, and shall be forever disqualified from voting at any election, or holding any office of honor, trust, or profit, within this territory.

Meaning of words.

SEC. 63. That when any person or persons shall be convicted for the violation of any of the provisions of this or any other act in force in this territory, and sentenced to "hard labor," or "confinement and hard labor," it shall be construed to mean "to hard labor and confinement."

This act to take effect and be in force from and after its passage.

CHAPTER 50.

CRIMES AND PUNISHMENTS.

An Act defining the punishment of crimes affecting currency, records and securities, public and private.

§ 1. Forgery in the first degree.
2. Additional acts constituting forgery in the first degree.
3. Forging certain seals, forgery in the second degree.
4. Altering, &c., records and returns, forgery in the second degree.
5. Altering entries in records or returns, forgery in the second degree.
6. Officers making false certificates of acknowledgment of deeds, &c., forgery in the second degree.
7. Counterfeiting gold or silver coin, forgery in second degree.
8. Forging notes, bills, &c., on any bank, forgery in second degree.
9. Selling, exchanging, &c., such note, bill, &c., forgery in second degree.
10. Having in possession, or bringing into this territory, such note, bill, &c., with intent, &c., forgery in second degree.
§ 11. Engraving, &c , plates, in similitude of bank bills, &c., forgery in the second degree.
12. When plates deemed in similitude of genuine bills, &c.
13. Bringing into this territory, having in possession, selling, &c., counterfeit gold or silver coin, forgery in third degree.
14. Selling, changing, or delivering, &c., such coin, forgery in third degree.
15. Counterfeiting, &c., process, plea, &c., of a competent court, forgery in third degree.
16. Counterfeiting instruments affecting pecuniary demands, forgery in third degree.
17. False entries in books of certain public officers, forgery in third degree.
18. False entries in books of moneyed corporations, forgery in the third degree.

§ 19. Having in possession forged instruments, with intent, &c., forgery in the fourth degree.
20. Selling, delivering, exchanging, &c., such instrument, forgery in the fourth degree.
21. Passing or offering to pass counterfeit coin, forgery in the fourth degree.
22. Total obliteration of writings, when deemed forgery.
23. Putting together different parts of several genuine instruments, with intent to defraud, forgery, &c.
24. What deemed written instrument, &c.
25. Affixing pretended signatures to notes, &c., of corporations, deemed forgery.
26. Making false instruments, &c., in a pretended or fictitious name.
27. Making false instruments, &c., in his own name, as the act of another, forgery.
§ 28. Impairing, clipping, &c., gold or silver coin, &c.
29. Punishment for the several degrees of forgery.
30. Making, keeping, &c., rolling press, &c., for forging, &c., how punished.
31. To cast, stamp, engrave, &c., or have tools for that purpose, with intent, &c., how punished.
32. Personating another in certain cases, how punished.
33. Tearing, cutting, burning any will &c., how punished.
34. Aiding, assisting, counselling, &c., in the commission of any offences specified in this article, how punished.
35. Disqualifications annexed to above offences.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Forgery in the first degree.

SECTION 1. Every person who shall forge, counterfeit or falsely alter, or cause or procure to be forged, counterfeited or falsely altered, *First*, any will of real or personal property, or any deed or other instrument, being or purporting to be the act of another, by which any right or interest in real property shall be or purport to be transferred, or in any way changed or affected; or, *Second*, any certificate of the acknowledgment or proof of any deed or other instrument, which by law may be recorded, made, or purporting to have been made, by any court or officer duly authorized to make such certificate or endorsement; or, *Third*, any certificate of the proof of any will of real or personal property which by law may be recorded, made, or purporting to have been made, by any officer authorized to make such certificate; or, *Fourth*, any certificate or endorsement of the filing or recording any such will, deed, or other instrument, which by law may be recorded, or purporting to have been made by any officer authorized to make such certificate or endorsement, with intent to defraud, shall, on conviction, be adjudged guilty of forgery in the first degree. (10)

Additional acts constituting forgery in the first degree.

SEC. 2. Every person who shall forge, counterfeit, or falsely alter, or cause or procure to be forged, counterfeited, or falsely altered, *First*, any warrant, order, bill, certificate, or other public security, issued or purporting to have been issued under the authority of this territory, by virtue of any law thereof, by which the payment of any money absolutely, or upon a contingency, shall be promised, or the receipt of any money, goods, or valuable thing, shall be acknowledged, or which shall be or purport to be receivable in payment of the territory ; or, *Second*, any certificate of any share or interest in any public stock, created by virtue of any law of this territory, issued or purporting to have been issued by any public officer, or any bond or other evidence of any debt of this territory, either absolute or contingent, made or issued or purporting to have been made or issued by any public officer ; or, *Third*, any endorsement, assignment, or other instrument, transferring or purporting to transfer the right or interest of any holder of such warrant, order, bill, certificate, public security, certificate of stock, bond, evidence of debt or liability, or any person entitled to such right or interest, with intent to defraud this territory, or any public officer thereof, or any other person, shall, on conviction, be adjudged guilty of forgery in the first degree.

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(10) *Vide,* The State vs. Shoemaker, 7 Missouri Rep., 277; 2 East, P. C., 966, 991, 858, 950, 1001, 855; Arch., 283; 4 Black. Com., 247; 2 Russ., 335; 2 T. R., 606 4 T. R., 28.

Forging certain seals, forgery in the second degree.

SEC. 3. Every person who shall forge or counterfeit, or cause or procure to be forged or counterfeited, the seal of this territory, the seal of any court of record, or the seal of any public office authorized by law, the seal of any officer by law entitled to have and use an official seal, or the seal of any body corporate duly incorporated by or under the laws of this territory, or who shall make, or forge, or counterfeit any impression purporting to be the impression of any such seal, with intent to defraud, shall, upon conviction, be adjudged guilty of forgery in the second degree.

Altering, &c., records and returns, forgery in the second degree.

SEC. 4. Every person who, with intent to defraud, shall falsely alter, destroy, corrupt or falsify, or procure to be falsely altered, destroyed, corrupted, or falsified, *First*, any record of any will, conveyance, or other instrument, the record or the copy of the record of which, by law, shall be evidence ; or, *Second*, any record of any judgment or decree in any court of record ; or, *Third*, the return of any officer, court, or tribunal to any order, writ, or process of any court, shall, upon conviction, be adjudged guilty of forgery in the second degree.

Altering entries in records or returns, forgery in the second degree.

SEC. 5. Every person who shall falsely make, forge or alter, or cause or procure to be falsely made, forged or altered, any entry in any book of records, or any instrument purporting to be any record or return, specified in the last section, with intent to defraud, shall, upon conviction, be adjudged guilty of forgery in the second degree.

Officers making false certificates of acknowledgment

SEC. 6. If any person authorized to take the proof or acknowledgement of any conveyance of real estate, or of any of deeds, &c., forgery in the second degree.

instrument which by law may be recorded, shall either, *First*, wilfully certify that any such conveyance or instrument was acknowldged by any party thereto, when, in truth, no such acknowledgment was made; or, *Second*, wilfully certify that any conveyance or instrument was proved, when, in fact, no such proof was made; or, *Third*, wilfully certify falsely in any material matter contained in any certificate, being or purporting to be a certificate of the acknowledgment or proof of any such conveyance or instrument, shall, upon conviction, be adjudged guilty of forgery in the second degree.

Counterfeiting gold or silver coin, forgery in the second degree.

SEC. 7. Every person who shall counterfeit, or cause or procure to be counterfeited, any gold or silver coin at the time current within this territory by law or usage, or in actual use or circulation within this territory, or shall make or cause to be made any false or counterfeit coin, in imitation or similitude of any gold or silver coin so current, or in actual use or circulation within this territory, shall, on conviction, be adjudged guilty of forgery in the second degree. (*h*)

Forging notes, bills, &c., on any bank, forgery in the second degree.

SEC. 8. Every person who shall forge or counterfeit, or falsely make or alter, or cause or procure to be forged, counterfeited, or falsely made or altered, *First*, any promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt, being or purporting to be made or issued by any bank incorporated under the laws of the United States or this territory, or of any other territory, state, government, or country; or, *Second*, any order or check, being or purporting to be drawn on any such incorporated bank, or any cashier thereof, by any other person, company or corporation, shall, upon conviction, be adjudged guilty of forgery in the second degree.

Selling, exchanging, &c., such notes, bills, &c., forgery in the second degree.

SEC. 9. Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, or receive upon a sale, exchange or delivery, for any consideration, any falsely made, altered, forged or counterfeited note, check, bill, draft, or other instrument, the falsely making, altering, forging or counterfeiting of which is, by the last section, declared to be an offence, knowing the same to be falsely made, altered, forged or counterfeited,

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(*h*) In Mattison vs. The State, 3 Missouri Rep., 421, it was held that the 43d and 44th sections of the act concerning crimes and misdemeanors, in the Rev. Code of 1825, which embrace the same offences described in this, together with the 12th, 14th and 21st sections following, were void, on the ground that congress possessed, under the constitution of the United States, the exclusive power to provide for the punishment of counterfeiting the coin made or declared current. In the State vs. Shoemaker, (in vol. 7, p. 177) in which an indictment founded on the 21st section was considered, this question was not raised at the bar, or noticed in the opinion of the court. See Hendrick's case; 5 Leigh, 709; and State vs. Tuft; 2 Baily, S. C. R., 44; and State vs. Randall; 2 Aikin, 1 R. (Vermont) centre. See, also, 3 Story Com., 21st section.

with intent to have the same altered or passed, shall be adjudged guilty of forgery in the second degree.

Bringing into this territory, or having in possession such note, bill, &c., with intent, &c., forgery in the second degree.

Sec. 10. Every person who shall bring into this territory, or have in his possession or custody, any falsely made, altered, forged or counterfeited note, bill, check, draft, or other instrument, the falsely making, altering, forging or counterfeiting of which is, by the eighth section of this act, declared to be an offence, knowing the same to be falsely made, altered, forged or counterfeited, with the intent to utter, pass, sell or exchange the same as true or false, or to cause the same to be passed, uttered, sold or exchanged, with intent to defraud, shall, on conviction, be adjudged guilty of forgery in the second degree.

Engraving, &c., plates in similitude of bank bills, &c , forgery in the second degree.

Sec. 11. Every person who shall either, *First*, make or engrave, or cause or procure to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, or order, check, certificate of deposit, or other evidence of debt, issued by any incorporated bank in this territory; or by any bank incorporated under the laws of the United States, or of any state or territory thereof, or under the laws of any foreign country or government, without the authority of such bank; or, *Second*, have or keep in his custody or possession any such plate, without the authority of such bank, with the intent of using or having the same used for the purpose of taking therefrom any impression to be passed, sold or uttered; or, *Third*, make or cause to be made, or have or keep in his custody or possession, any plate upon which shall be engraved any figures or words intended or adapted to, or which may be used for the purpose of falsely altering any evidence of debt, issued by any such incorporated bank, with the intent of using or having the same used for that purpose; or, *Fourth*, make or cause to be made, or have or keep in his custody or possession, without the authority of such bank, any impression taken from any such plate, with the intent to fill up and complete, or to have the same filled up and completed, or sold, passed or uttered, shall, upon conviction, be adjudged guilty of forgery in the second degree.

When plate deemed in similitude of genuine bills, &c.

Sec. 12. Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument in either of the following cases: *First*, when the engraving on such plate, or any impression therefrom, resembles and conforms to such parts of the genuine instrument as are engraved; or, *Second*, where such plate shall be partly finished, and the part so finished, or any impression therefrom, resembles and conforms to similar parts of the genuine instrument.

Bringing into this territory, having

Sec. 13. Every person who shall bring into this territory, or ave in his custody or possession, any counterfeit or imitation of

In possession, selling, &c., counterfeit gold or silver coin, forgery in the third degree.

any gold or silver coin, the counterfeiting of which is hereinbefore declared to be an offence, knowing the same to be counterfeited, with intent to defraud or injure by uttering the same as true or false, or by causing the same to be uttered, shall, upon conviction, be adjudged guilty of forgery in the third degree.

Selling, exchanging or delivering, &c., such coin, forgery in the third degree.

SEC. 14. Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, or receive upon any sale, exchange or delivery, any such counterfeit or imitation of any gold or silver coin, specified in the last section, knowing the same to be countefeited, with the intent to have the same uttered or passed, shall be adjudged guilty of forgery in the third degree.

Counterfeiting, &c., ples, &c., of a competent court, forgery in the third degree.

SEC. 15. Every person who, with intent to injure or defraud, shall falsely make, alter, forge or counterfeit any instrument, or writing, being or purporting to be any process issued by any competent court, or magistrate, or officer, or any pleading or proceeding filed or entered in any court of law or equity, or any certificate, order or allowance by any competent court or officer, or any license or authority authorized by any statute, shall, on conviction, be adjudged guilty of forgery in the third degree.

Counterfeiting instrument affecting pecuniary demands, forgery in the third degree.

SEC. 16. Every person who, with intent to injure or defraud, shall falsely make, alter, forge, or counterfeit any instrument or writing, being or purporting to be, the act of another, by which any pecuniary demand or obligation shall be or purport to be transferred, created, increased, discharged or diminished, or by which any rights or property whatsoever shall be or purport to be transferred, conveyed, discharged, increased, or in any manner affected, the falsely making, altering, forging or counterfeiting of which is not hereinbefore declared to be a forgery in some other degree, shall, on conviction, be adjudged guilty of forgery in the third degree.

False entries in books of certain public officers, forgery in the third degree.

SEC. 17. Every person who, with intent to defraud, shall make any false entries, or shall falsely alter any entry made in a book of accounts kept in the office of the auditor of public accounts, or in the office of the territorial treasurer, or of any county treasurer, by which any demand or obligation, claim, right or interest, either against or in favor of this territory, or any county, or any individual, shall be, or shall purport to be, created, increased, discharged, diminished, or in any manner affected, shall, upon conviction, be adjudged guilty of forgery in the third degree.

False entries in books of moneyed corporations, forgery in the third degree.

SEC. 18. Every person who, with intent to defraud, shall make any false entries, or shall falsely alter any entry made in a book of accounts kept by any moneyed corporation within this territory, or in any book of accounts kept by any such corporation or its officers, and delivered, or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit shall be, or shall purport to be, created, increased, diminished, or discharged, or in any manner affected, shall, upon conviction, be adjudged guilty of forgery in the third degree.

Having in possession forged instruments with intent, &c., forgery in the fourth degree.

SEC. 19. Every person who shall have in his possession, buy or receive any falsely made, altered, forged or counterfeited instrument or writing, the forgery of which is hereinbefore declared to be an offence, (except such as are enumerated in the eighth section of this act,) knowing the same to be forged, counterfeited, or falsely made or altered, with intent to injure or defraud by uttering the same as true or false, or causing the same to be so uttered, shall, on conviction, be adjudged guilty of forgery in the fourth degree.

Selling, delivering, exchanging, &c., such instrument, forgery in the fourth degree.

SEC. 20. Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, for any consideration, any falsely altered, forged or counterfeited instrument or writing, the forgery of which is declared punishable (except as in the last section is excepted), knowing the same to be forged, counterfeited or falsely altered, with the intention to have the same uttered or passed, shall, on conviction, be adjudged guilty of forgery in the fourth degree.

Passing or attempting to pass counterfeit coin, forgery in the fourth degree.

SEC. 21. Every person who, with intent to defraud, shall pass, utter, or publish, or offer or attempt to pass, utter, or publish, as true, any forged, counterfeited, or falsely uttered instrument or writing, or any counterfeit or any imitation of any gold or silver coin, the altering, forging, or counterfeiting of which is hereinbefore declared to be an offence, knowing such instrument, writing, or coin, to be altered, forged, or counterfeited, shall, upon conviction, be adjudged guilty of forgery in the same degree hereinbefore declared for the forging, altering or counterfeiting the instrument, writing or coin so passed, uttered or published, or offered or attempted to be passed, uttered or published. (*i*)

Total obliteration of writings, when deemed forgery.

SEC. 22. The total erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to money, right in action or property, shall be or purport to be, or shall be intended to be created, conveyed, transferred, increased, discharged, diminished, or in any manner affected, shall be deemed forgery in the same manner and in the same degree as the false alteration of the whole or any part of such instrument or writing.

(*i*) In Shoemaker vs. The State, 7 Missouri Rep., 177, held that in an indictment under this section the coin counterfeited must be described as current at the time the counterfeit is made, and not necessarily when it is passed or offered; attempting to pass the counterfeit would still be an offence, though the genuine coin should have gone out of circulation.

Putting together different parts of several genuine instruments with intent to defraud, forgery, &c.

SEC. 23. When different parts of several genuine instruments shall be so placed or connected together as to produce one instrument, with intent to defraud, the same shall be deemed forgery in the same manner and in the same degree as if the parts so put together were falsely made or forged.

What deemed a written instrument, &c.

SEC. 24. Every instrument, partly printed and partly written, or wholly printed, with a written signature thereto, and every signature of an individual, firm or corporate body, or of any officer of such body, and every writing purporting to be such signature, shall be deemed a writing and a written instrument, within the meaning of the provisions of this act.

Affixing pretended signature to notes, &c., of corporations, deemed forgery.

SEC. 25. The false making, forging or counterfeiting of any evidence of debt, or negotiable instrument, issued or purporting to have been issued, by any corporation having authority for that purpose, to which shall be affixed the pretended signature of any person as an agent or officer of such corporation, shall be deemed a forgery in the same degree and in the same manner as if such person was, at the time, an officer or agent of such corporation, notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

Making false instruments, &c., in a pretended or fictitious name.

SEC. 26. The false making, forging or counterfeiting of any instrument or writing, being or purporting to be the act of another, by which any pecuniary demand or obligation, or any right, interest or claim to money, right in action, or property, shall be or purport to be, or intended to be conveyed, transferred, created, increased, discharged, diminished, or in any manner affected, to which shall be affixed a fictitious name, or the name or pretended signature of any person not in existence, shall be deemed a forgery in the same degree and in the same manner as if the name so affixed was the name of a person in being, or purporting to be the signature of a person in existence.

Making false instruments, &c., in his own name as the act of another, forgery.

SEC. 27. If any one shall, with intent to injure or defraud, make any instrument or writing (as in the last section specified) in his name, and shall utter or pass it under the pretence that it is the act of another who bears the same name, he shall, upon conviction, be adjudged guilty of forgery in the same degree as if he had forged the instrument in the name of a person bearing a different name from his own.

Impairing, clipping, &c., gold or silver coin, &c.

SEC. 28. Every person who, with intent to defraud, shall impair, falsely clip, scale, lighten or diminish any gold or silver coin, current by law or usage, or in actual use and circulation within this territory, shall, on conviction, be adjudged guilty of forgery in the fourth degree.

SEC. 29. Persons convicted of forgery, as herein specified and declared, shall be punished as follows: *First*, those convicted of forgery in the first degree, by imprisonment and hard labor for a term not less than ten years; *Second*, those in the second degree, by the like confinement and hard labor not less than seven nor more than ten years; *Third*, those in the third degree, by like confinement and hard labor not exceeding seven years; *Fourth*, those in the fourth degree, by the like imprisonment and hard labor not exceeding five years, or by imprisonment in a county jail not less than six months.

Punishment for the several degrees of forgery.

SEC. 30. Every person who shall form, make or mend, have or keep in his possession or custody, or sell, exchange or deliver to another, any paper, rolling press, or other tool, instrument or material, devised, adapted or designed for the stamping, forging, and making any false or counterfeit bill, note, certificate, or other negotiable evidence of debt, issued by any incorporated bank, as specified in the eighth section of this act, or devised, adapted and designed for the falsely altering any such bill, note, draft, check, certificate, or other evidence of debt, of any such bank, with intent to use and employ the same, or cause or permit the same to be used or employed in the falsely making, altering, forging or counterfeiting any such bill, note, draft, check or certificate, or other evidence of debt, shall, upon conviction, be punished as hereinbefore prescribed for forging in the third degree.

Making, keeping, &c, rolling press for forgery, &c.

Punishment.

SEC. 31. If any person shall cast, stamp, engrave, form, make or amend, or shall begin to cast, stamp, engrave, form, make or amend, or shall knowingly have in his possession or custody, or shall sell, exchange, or deliver to another, any mould, pattern, dye, puncheon, engine, press, or other tool or instrument, devised, adapted or designed for the coining or making, edging, graining or lettering any false or counterfeit money or coin, in imitation or similitude of any gold or silver coin, current by law or usage, or in use or circulation within this territory, with the intent to use and employ the same, or procure or permit the same to be used or employed in coining or making, or edging, graining or lettering any such false and counterfeit coin, upon conviction, shall be punished as hereinbefore prescribed for forgery in the fourth degree.

To cast, stamp, engrave, &c., or have tools for that purpose, with intent, &c., how punished.

SEC. 32. Every person who shall falsely represent or personate another, and in such assumed character shall, either, *First*, become bail or security, or acknowledge any recognizance, or execute any bond or other instrument, as bail or security, for any party in any proceeding, civil or criminal, before any court

Personating another in certain cases, how punished.

or officer authorized to take such bail or security; or, *Second*, confess any judgment; or, *Third*, acknowledge the execution of any conveyance of any real or personal property, or any other instrument which, by law, may be recorded; or *Fourth*, do any other act in the course of a suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs or sum of money, or his rights or interests may be in any manner affected, shall, on conviction, be punished by confinement and hard labor not exceeding ten years.

Tearing, cutting, burning any will, &c., how punished.

SEC. 33. If any person shall unlawfully, wilfully and maliciously tear, cut, burn, or in any way whatever destroy any will, deed, or other instrument or writing, the falsely making, altering, forging or counterfeiting of which is hereinbefore declared to be a punishable offence, shall, on conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Aiding, assisting, counselling, &c., in the commission of offences specified in this act, how punished.

SEC. 34. Every person who shall aid or assist, abet, counsel, hire, or by any means procure any other person to commit any offence punishable under any of the preceding provisions of this act, shall be adjudged guilty of the same offence, in the same degree, and shall be punished in the same manner as for the committing the offence so aided, assisted, abetted, counselled, hired, or procured to be committed.

Disqualifications annexed to above offences.

SEC. 35. Every person who shall be convicted of any felony punishable by the provisions of this act shall be incompetent to be sworn as a witness or juror, and forever disqualified from voting at any election, or holding any office of honor, trust or profit within this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 51.

CRIMES AND PUNISHMENTS.

An Act defining the punishment for crimes affecting the administration of justice.

§ 1. Perjury defined.
2. Its punishments.
3. Subornation of perjury.
4. Its punishment.
5. Attempt to procure perjury, how punished.

§ 6. What sufficient in indictment for perjury.
7. What sufficient in indictment for subornation of perjury.
8. Bribing, &c., witnesses, &c., to withhold evidence, &c., how punished.

§ 9. Jurors, arbitrators, &c., how punished for taking bribes.
10. Bribing, or attempting to bribe, jurors, arbitrators, &c., how punished.
11. Jurors guilty of certain improper conduct, how punished.
12. Attempting to influence jurors, arbitrators, &c., how punished.
13. Officers guilty of unfair conduct in summoning jurors, &c., how punished.
14. Compounding or concealing felonies, how punished.
15. Compounding, &c., misdemeanors, &c., how punished.
16. Conviction of principal not necessary in the trial of offences specified in two last sections.
17. Obstructing process in cases of felony, how punished.
18. Obstructing process in civil cases and misdemeanors.
19. To assault, &c., officers in discharge of official duty, how punished.
20. Rescuing prisoner, convicted of capital offence, how punished.
21. Rescuing prisoners charged with the same.
22. Rescuing prisoners charged or convicted of felonies not capital.
23. Rescuing prisoners charged or convicted of offences other than felony.
24. Attempt to rescue prisoner charged or convicted of felony, how punished.
25. Attempt to rescue prisoner charged or convicted of offences not felonies, how punished.
26. Conveying instruments into jail or penitentiary to aid escape of felons, how punished.
27. Conveying instruments into jail, &c., to aid escape of prisoners other than felons.
§ 28. Aiding felon to escape from jail, &c., how punished.
29. Aiding prisoner, other than a felon, to escape, &c.
30. Aiding prisoner to escape from the custody of an officer, &c.
31. Punishment limited where the object is prisoner's own escape.
32. Punishment for breaking penitentiary, escaping, &c.
33. Punishment of escape from penitentiary.
34. Punishment for escape from penitentiary without breaking, &c.
35. Punishment of escape from county jail, when prisoner is confined for crime.
36. Punishment for escape before conviction, when the conviction is for a violation of a penal statute.
37. Escape from the penitentiary, &c., by force or violence, &c., how punished.
38. Escaping, or attempting an escape, from county jail, &c., by force or violence, &c., how punished.
39. Officer permitting disguised instruments to be conveyed into penitentiary or jail, how punished.
40. Officer permitting or conniving at escape, how punished.
41. Officer refusing to execute process on any person charged with crime, how punished.
42. Jailor refusing to receive prisoner, how punished.
43. Forfeiture of office annexed to certain offences.
44. Prisoner escaping, may be retaken, &c.
45. Common barratry, how punished.
46. Disqualification annexed to certain offences.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Perjury defined. SECTION 1. Every person who shall wilfully and corruptly swear, testify or affirm falsely to any material matter, upon any oath, or affirmation, or declaration legally administered, in any cause, matter, or proceeding, before any court, tribunal, or public body or officer, shall be deemed guilty of perjury. (*k*)

Its punishment. SEC. 2. Every person who shall be convicted of wilful and corrupt perjury shall be punished, in the following cases, as follows: *First*, for perjury committed on the trial of any indictment for a capital offence, with an express premeditated design

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(*k*) *Vide*, State vs. Hamilton, 7 Missouri Rep., 300; 4 Black. Com., 137; n. 35 by Chr. *ibid*, 138; Arch. 425, 434; 2 Russ. 520, 551, 550, 554; 3 Salk., 269; 1 Hawk., P. C., c, 69, s. 2; 1 Lord Raym., 266; 3 Inst., 164.

to effect the condemnation and execution of the prisoner, death, or confinement and hard labor not less than ten years; *second*, for perjury committed on the trial of an indictment for a capital offence, without such design, or for any other felony, by confinement and hard labor not less than seven years; *third*, for perjury committed on any other trial or proceeding, or in any other case, by confinement and hard labor for a term not exceeding seven years.

Subornation of perjury.

Sec. 3. Every person who shall procure any other person, by any means whatsoever, to commit any wilful or corrupt perjury in any cause, matter or proceeding, in or concerning which such other person shall be legally sworn or affirmed, shall be adjudged guilty of subornation of perjury.

Its punishment.

Sec. 4. Every person convicted of subornation of perjury shall be punished in the same manner as hereinbefore prescribed, upon a conviction for the perjury which shall have been so procured.

Attempt to procure perjury, how punished.

Sec. 5. Every person who shall, by the offer of any valuable consideration, attempt unlawfully and corruptly to procure or entice any other to commit wilful and corrupt perjury, in any cause, matter, or proceeding, in or concerning which such other person might by law be sworn or affirmed, shall, on conviction, be punished by confinement and hard labor for a term not exceeding five years.

What sufficient in indictment for perjury.

Sec. 6. In any indictment for perjury, it shall be sufficient to set forth the substance of the offence charged, and by what court, or before whom, the oath was taken, (averring such court or person to have competent authority to administer the same,) together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of the record, proceeding or process, either in law or equity, or any commission or authority of the court or person before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same.

What sufficient in indictment for subornation of perjury.

Sec. 7. In every indictment for subornation of perjury, or for any corrupt bargain, contract, or attempt to procure another to commit perjury, it shall be sufficient to set forth the substance of the offence, without setting forth the record, proceedings or process, or any commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed.

Bribing, &c., witnesses, &c., to withhold evidence, &c., how punished.

Sec. 8. Every person who shall, by bribery, menace, or other means, directly or indirectly, induce or attempt to induce any witness to absent himself, or avoid a subpœna or other process, or to withhold his evidence, or shall deter or attempt to deter him from appearing or giving evidence in any cause, matter or proceding, civil or criminal, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail, not exceeding one year, and by fine, not exceeding three-hundred dollars. (11)

Jurors, arbitrators and referees, how punished for

SEC. 9. If any person summoned as a juror, or if any person chosen as an arbitrator, or appointed a referee, shall take any thing to give his verdict, award or report, or shall receive any gratuity or gift from any party to a suit, proceeding or prosecution, for the trial of which such person shall have been summoned or sworn as a juror, or for the hearing of which he shall have been chosen an arbitrator or appointed a referee, he shall, on conviction, be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months, or by a fine not less than five hundred dollars, or by a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Bribing or attempting to bribe jurors, arbitrators, &c., how punished.

SEC. 10. Every person who shall corrupt or attempt to corrupt any other summoned or sworn as a juror, appointed a referee, or chosen an arbitrator, by giving or offering to give any gift or gratuity whatsoever, with intent to bias the mind of such juror, referee or arbitrator, or incline him to be more favorable to one side than the other in relation to any cause, matter or proceeding which may be pending in the court to which such juror shall have been summoned, or in which such referee or arbitrator shall have been chosen or appointed, shall, on conviction, be punished as in the next preceding section is prescribed.

Jurors guilty of certain improper conduct, how punished.

SEC. 11. If any person summoned or sworn as a juror, in any case, shall promise or agree to give any verdict for or against any party, in any cause or proceeding, civil or criminal, or shall receive any paper, evidence or information from any one in relation to any matter or cause, for the trial of which he shall be sworn, without the authority of the court or officer, before whom such juror shall have been summoned, and without immediately disclosing the same to such court or officer he shall, on conviction, be adjudged guilty of a misdemeanor, be punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Attempting to influence jurors, arbitrators, &c., how punished.

SEC. 12. Every person who shall attempt improperly to influence any juror in any civil or criminal case, or any one summoned as a juror, or any one chosen an arbitrator, or appointed a referee, in relation to any matter pending in the court or before the officer before whom such juror shall have been summoned or sworn, or pending before such arbitrator or referee, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished as in the last preceding section is prescribed.

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(11) See 4 Black. Com., 139, 140; Arch., 435; 1 Russ., 157, 158.

Officers guilty of unfair conduct in summoning jurors, &c., how punished.

Sec. 13. If any person whose duty it shall be to select or summon any jurors in any court, or before any court, or before any officer, shall be guilty of any unfair, partial or improper conduct in selecting or summoning any juror, he shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Compounding or concealing felonies, how punished.

Sec. 14. Every person having a knowledge of the actual commission of any offence punishable by death, or by confinement and hard labor, who shall take any money or property of another, or any gratuity or reward, or any promise, undertaking or engagement therefor, upon agreement or understanding express or implied, to compound or conceal such crime, or to abstain from any prosecution therefor, or withhold any evidence thereof, shall, upon conviction, be punished by confinement and hard labor for a term not exceeding five years.

Compounding, &c., misdemeanors, how punished.

Sec. 15. Every person having a knowledge of the actual commission of any offence, punishable only by imprisonment in the county jail, or by fine, or by such imprisonment and fine, or of any misdemeanor or violation of any statute for which any pecuniary or other penalty or forfeiture is or shall be prescribed, who shall take any money, property, gratuity or reward, or any promise, engagement or undertaking therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, or by both such fine and imprisonment.

Conviction of principal not necessary in trial of offences specified in the two last sections.

Sec. 16. Upon the trial of any indictment for any offences specified in the two last sections, it shall not be necessary to prove the conviction of any offender for the offence, in relation to which any agreement or understanding therein prohibited shall have been made.

Obstructing process in cases of felony, how punished.

Sec. 17. If any person or persons shall knowingly and wilfully obstruct, resist or oppose any sheriff or other ministerial officer in the service or execution, or in the attempt to serve or execute any writ, warrant or process, original or judicial, or in discharge of any official duty in any case of felony, every person so offending shall, upon conviction, be punished by confinement and hard labor for a term not exceeding five years, or by imprisonment in the county jail for a term not less than six months, or a fine not less than five hundred dollars, or by a fine not less than one hundred dollars and imprisonment in the county jail not not less than three months.

Obstructing process in civil cases and misdemeanors, how punished.

Sec. 18. If any person or persons shall knowingly and wilfully obstruct, resist or oppose any sheriff, or any other ministerial officer, in the service or execution or in the attempt to serve or execute any writ, warrant or process, original or judicial, or in the discharge of any other duty, in any case, civil or criminal, other than felony, or in the service or attempt to serve any order or rule of court, in any case, every person so offending shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, or by fine not exceeding three hundred dollars, or by both such fine and imprisonment.

To assault, &c., officer in discharge of official duty, how punished.

Sec. 19. Every person who shall knowingly and wilfully assault, beat or wound any such officer while engaged in the service or execution, or attempt to serve or execute any writ, warrant or process, original or judicial, or any order or rule of court, or while in the discharge of any other official duty, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in the last preceding section is declared.

Rescuing prisoner convicted of capital offence, how punished.

Sec. 20. If any person or persons shall by force set at liberty, or rescue from custody or prison, any person convicted of a capital offence, or shall set at liberty or rescue any person convicted of such crime, while going to execution, or during execution, every person so offending shall be punished by confinement and hard labor for a term not less than ten years.

Rescuing prisoner charged with the same.

Sec. 21. If any person or persons shall by force set at liberty or rescue any prisoner while in custody or confinement for a capital offence, before conviction, every person so offending shall, on conviction, be punished by confinement and hard labor not exceeding ten years.

Rescuing prisoner charged or convicted of felonies not capital.

Sec. 22. If any person or persons shall by force set at liberty or rescue any prisoner in custody or confinement for a felony not capital, whether before or after conviction, every person so offending shall be punished by confinement and hard labor for a term not exceeding ten years.

Rescuing prisoners charged or convicted of offences other than felony.

Sec. 23. If any person or persons shall by force set at liberty or rescue any person held in custody or prison for any offence other than felony, whether before or after conviction, or upon any writ or process, original or judicial, in any civil case, every person so offending shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, and by fine not exceeding five hundred dollars.

Attempt to rescue prisoner charged or convicted of felony, how punished.

SEC. 24. Every person who shall attempt by force to set at liberty or rescue any prisoner in custody or confinement for a felony, whether before or after conviction, shall be punished by confinement and hard labor for a term not exceeding five years.

Attempt to rescue prisoner charged or convicted of offences not felonies, how punished.

SEC. 25. Every person who shall attempt by force to set at liberty or rescue any prisoner in custody for an offence other than felony, before or after conviction, or upon any writ, warrant or process, original or judicial, in a civil case, or any other lawful authority, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months.

Conveying instruments into jail, &c., to aid escape of prisoners who are felons, how punished.

SEC. 26. Every person who shall convey into the penitentiary, or any jail or other place of imprisonment, any disguised instrument, arms or other thing proper or useful to aid any prisoner in his escape, with intent thereby to facilitate the escape of any prisoner lawfully committed to or detained in any such place of confinement and hard labor for any felony whatever, whether such escape be effected or attempted, or not, shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding ten years.

Conveying instruments into jail, &c., to aid escape of prisoners other than felons; punishment.

SEC. 27. Every person who shall convey into any jail or place of confinement any disguised instrument, or any thing proper or useful to facilitate the escape of any prisoner lawfully committed to or detained in such jail or place of confinement for any criminal offence other than a felony, or lawfully imprisoned or detained therein for any violation of any penal statute, or in any civil action, whether such escape be effected or attempted, or not, shall be adjudged guilty of a misdemeanor and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Aiding felon to escape from jail, how punished.

SEC. 28. Every person who shall by any means whatever aid or assist any prisoner lawfully detained in any jail or place of confinement, for any felony, to escape therefrom, whether such escape be effected or not, shall, upon conviction, be punished by confinement and hard labor for a term not exceeding five years.

Aiding prisoner other than felon, &c.

SEC. 29. Every person who shall by any means whatever aid or assist any prisoner lawfully committed to any jail or place of confinement in any case, civil or criminal, other than a felony, to escape therefrom, whether such escape be effected or not, shall be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Aiding prisoner to escape from the custody of an officer, &c

Sec. 30. Every person who shall aid or assist any prisoner in escaping or attempting to escape from the custody of any sheriff, coroner, constable or other ministerial officer, or other person who shall have the lawful charge of such prisoner, shall, upon conviction, be punished in the same manner as if such prisoner were confined in any jail or other place of confinement.

Punishment limited, when the object is prisoner's own escape.

Sec. 31. But if any aid or assistance prohibited by the three last sections be rendered by any prisoner detained for any crime in the same jail, place of confinement or custody, with the intent of facilitating his own escape, the punishment of such prisoner shall not exceed that prescribed by law upon conviction for his own escape.

Punishment for breaking penitentiary, escaping, &c.

Sec. 32. If any person confined in a place of confinement for any term less than for life, or in lawful custody going to the place of confinement, shall break such prison or custody and escape therefrom, he shall, upon conviction, be punished by confinement and hard labor for a term not exceeding five years, to commence at the expiration of the original term of imprisonment.

Punishment for escaping from penitentiary, &c.

Sec. 33. If any person confined in the penitentiary for any term less than life shall escape from such prison or from the custody of the officers, he shall be liable to the punishment imposed for breaking the prison.

Punishment for escape, &c.

Sec. 34. If any person confined at hard labor for any term less than life shall escape therefrom without being guilty of breaking such prison, within the meaning of the preceding section, (section 32), he shall, upon conviction, be punished by confinement and hard labor for a term not exceeding three years, to commence at the expiration of the original term of imprisonment.

Punishment for escape from county jail when the prisoner is confined for crime.

Sec. 35. If any person confined in any county jail upon conviction for any criminal offence, or held in custody going to such jail, shall break such prison or custody and escape therefrom, he shall, upon conviction, be punished by confinement and hard labor not exceeding three years, or in a county jail not less than six months, to commence at the expiration of the original term of imprisonment.

Punishment of escape before conviction, when the charge is for a violation of a penal statute.

Sec. 36. If any person lawfully imprisoned or detained in any county jail or other place of imprisonment, or in the custody of any officer, upon any criminal charge, before conviction for the violation of any penal statute, shall break such prison or custody and escape therefrom, he shall, upon conviction, be punished by confinement and hard labor for a term not exceeding two years, or in a county jail not less than six months.

Escape from confinement, &c., by force or violence, how punished.

Sec. 37. Every person lawfully confined at hard labor, or held in custody going to such place of confinement under a sentence of imprisonment therein for a term less than life, who shall attempt by force or violence to any person to effect his escape from such confinement or custody, whether such escape be effected or not, shall, upon conviction, be punished by confinement and hard labor not exceeding five years, to commence at the expiration of the original term of imprisonment.

Escaping or attempting an escape from county jail, &c., by force or violence, &c., how punished.

Sec. 38. Every person lawfully imprisoned in a county jail or other place of confinement, or held in custody of any officer, for any cause whatever, who shall attempt by force or violence to any person to effect his escape from such imprisonment or custody, although no escape be effected, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding six months, or fined not exceeding one hundred dollars, or both.

Officer permitting disguised instruments to be conveyed into the jail or place, how punished.

Sec. 39. If any officer or other person having by law the custody or charge of any place of confinement and hard labor, or any county jail or other place of confinement, or the under-officer or deputy of such officer or person, shall knowingly suffer or permit any disguised instrument, arms, or other thing proper or useful to aid any prisoner in his escape, to be conveyed into or remain in such jail or place, he shall, upon conviction, suffer the like punishment as the person conveying such disguised instrument, arms or other thing into such jail or place would be liable to, according to the provisions of this act.

Officer permitting or conniving at escape, how punished.

Sec. 40. If any officer, or his under-officer or deputy, or any lessee, keeper, agent or guard, of any place of confinement, having the lawful custody of any prisoner, for any cause whatever, shall voluntarily suffer or permit, or connive at, the escape of such prisoner from his custody, or permit him to go at large, he shall, on conviction, be punished in the same manner as if he were convicted of aiding or assisting such prisoner to escape.

Officer refusing to execute process on any person charged with crime, how punished.

Sec. 41. If any sheriff, or other officer, shall wilfully or corruptly fail or refuse to execute any lawful process, which, by law, it is his duty to execute, requiring the apprehension or confinement of any person charged with a criminal offence, whereby such person shall escape, the officer so offending shall be punished in the same manner as persons convicted of aiding or assisting such escape.

Jailor refusing to

Sec. 42. If any jailor, or keeper of a county jail, shall re-

receive prisoner, how punished.

fuse to receive in the jail, under his charge, any person lawfully committed to such jail, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, and by fine not exceeding three hundred dollars.

Forfeiture of office annexed to certain offences.

SEC. 43. Every officer who shall be convicted of any of the offences specified in the last four preceding sections, shall forfeit his office.

Prisoner escaping may be retaken, &c.

SEC. 44. If any person sentenced to imprisonment in a county jail, or other place of confinement, on a conviction for a criminal offence, shall escape, he may be pursued, re-taken and imprisoned again, nothwithstanding the term for which he was sentenced to be imprisoned may have expired at the time he is retaken, and remain so imprisoned until tried for such escape, or until he be discharged by a failure to prosecute therefor.

Common barratry, how punished.

SEC. 45. Every person who shall be convicted of being a common barrator shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, or by both such fine and imprisonment.

Disqualification annexed to certain offences.

SEC. 46. Every person who shall be convicted of any perjury, or subornation of prejury, punishable by any of the provisions of this act, shall thereafter be incompetent to serve as a juror, or testify as a witness in any cause, civil or criminal, and shall be disqualified from voting at any election, or holding any office of honor, profit, or trust, within this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 52.

CRIMES AND PUNISHMENTS.

An Act defining the punishment of offences affecting public trusts.

§ 1. Bribery of officers, how punished.
2. Officers receiving such bribe, how punished.
3. Bribery, with a view to obtain appointment, &c., how punished.
4. Officers receiving such bribe, how punished.
5. Giving, procuring, &c., offices, in consideration of bribes.
§ 6. Accepting offices procured in this way, punishment for.
7. Offering or attempting to bribe, in any way before specified, how punished.
8. Giving, or promising money or office, in consideration of election to office, &c., bribery.
9. Receiving money or office on such agreement, bribery, and how punished.

§ 10. Any person having a right to vote, receiving a bribe, how punished.
11. Bribery of votes, how punished.
12. Selling office, or deputation thereof, how punished.
13. Buying or agreeing to pay for such office, &c., how punished.
14. Construction and qualification of two preceding sections.
15. Such grants or deputations of office declared void, saving acts done previous to conviction.
16. Oppression, partiality, &c., in public officers, how punished.
17. Frauds committed by public officers, how punished.
18. Disqualifications annexed to the commission of preceding offences.
§ 19. Punishment for exacting illegal fees.
20. Collector unlawfully collecting taxes; punishment.
21. General provisions touching the misconduct of public officers.
22. Forfeiture of office declared.
23. Usurpation of office, how punished.
24. Penalty for attempting unlawfully to influence voters.
25. Penalty for voting more than once at the same election.
26. Penalty for voting without being qualified.
27. Punishment for fraudulently giving voter printed ticket, &c.
28. Penalty for printing or circulating fraudulent tickets.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Bribery of officers, how punished.

SECTION 1. Every person who shall, directly or indirectly, give any money, goods, right in action, or any other valuable consideration, gratuity or reward, or any promise, undertaking, or security therefor, to any officer of this territory, or of any county, *First*, with intent to influence his vote, opinion, judgment, or decision, on any question, matter, cause or proceeding which may be then pending, or may by law be brought before him in his official capacity, or to induce him to neglect or omit the performance of any official duty, or to perform such duty with partiality or favor otherwise than is required by law; or, *Second*, in consideration that such officer hath given any vote, opinion, judgment or decision, in any particular manner, upon any particular side, or more favorable to one side than the other, or any matter, question, cause or proceeding, or hath omitted to perform any official act or duty, or hath performed such act or duty with partiality or favor, or otherwise contrary to law, shall, on conviction, be adjudged guilty of bribery, and be punished by confinement and hard labor for a term not exceeding seven years.

Officers receiving such bribe, how punished.

SEC. 2. Every such officer who shall, directly or indirectly, accept or receive any gift, consideration, gratuity or reward, or any promise or undertaking to make the same, *First*, under any agreement that his vote, opinion, judgment or decision shall be given in any particular manner, on any particular side, or more favorable to one side than the other, in any question, matter, cause or proceeding which may be pending or be brought before him in his official capacity, or that he shall neglect or omit to perform any official duty, or perform the same with partiality or favor, or otherwise than according to law; or, *Second*, in consideration that he hath give his vote, opinion, judgment, or decision, in any particular manner, on any particular side, or more favorably to one side than the other, of any question, matter, cause, or proceeding, or hath neglected or omitted to perform any official act or duty, or performed such act or duty with partiality or favor, or otherwise contrary to law, shall, on conviction, be adjudged guilty of bribery, and shall be punished by confinement and hard labor for a term not less than two years.

Bribery with the view to obtain appointment, &c., how punished.

SEC. 3. Every person who shall, directly or indirectly, give, or engage to give, any sum of money, or other valuable consideration, gratuity or reward, to any officer, *First*, with intent to influence or induce such officer to give or procure for him, or any other, by his act, interest, influence, or other means whatever, any appointment, office, or place of trust, or any preferment or emolument, or assist, by any means whatsoever, to procure the same; or, *Second*, in consideration of any office or appointment, preferment or emolument, act, interest, or influence, or any aid or assistance in procuring or attempting to procure such appointment, office, or place of trust, or any emoluments, shall, on conviction, be adjudged guilty of bribery, and shall be punished by confinement and hard labor for a term not exceeding seven years.

Officers receiving such bribe, how punished.

SEC. 4. Every officer who shall, directly or indirectly, accept or receive of another any sum of money, or other valuable consideration, gratuity or reward, or any promise or security thereof, *First*, upon any agreement to give, or procure by his act, interest or influence, or other means, any appointment, office, or place of trust, or any preferment or emolument, or to aid or assist in procuring the same for another person; or, *Second*, in consideration of any office or appointment, place, or preferment, or emolument, or any act, interest or influence, aid or assistance, by any means, in procuring, or attempting to procure, any such appointment, office, place of trust, preferment, or emolument, shall, on conviction, be adjudged guilty of bribery, and punished as in the next preceding section is prescribed.

Giving and procuring office, &c., in consideration of bribes, punishment.

SEC. 5. Every person who shall, directly or indirectly, give to or procure, or aid or assist in procuring, for another, by his aid, interest or influence, or by any other means whatsoever, any office, appointment, or place of trust, or any preferment or emolument, with the intent, or upon the consideration mentioned in the first or third sections of this act, shall, upon conviction, be adjudged guilty of bribery, and punished in the same manner as if he had paid or engaged to pay money, with the like intent, or for a like consideration.

Accepting offices procured in thi

SEC. 6. Every person who shall, directly or indirectly, accept, way, punishment for.

receive or obtain any office, appointment, or place of trust, preferment or emolument, or aid or assistance in obtaining, or attempting to obtain, the same for himself or another, or any promise or undertaking to procure such office, appointment, place of trust, preferment or emolument, by the act, interest or influence, aid or assistance, of another, upon any agreement or consideration mentioned in the second and fourth sections of this act, shall, upon conviction, be adjudged guilty of bribery, and punished in the same manner as if he had received money upon a like agreement or consideration.

Offering or attempting to bribe in any way before specified, how punished.

Sec. 7. If any person shall, by any of the means mentioned in the preceding sections of this act, or otherwise, offer or attempt to bribe any officer or other person, in any of the cases hereinbefore mentioned, he shall, on conviction, be punished by confinement and hard labor for a period not exceeding five years, or by imprisonment in the county jail for a term not exceeding one year, and a fine not less than one thousand dollars.

Giving or promising money or office in consideration of election to office, &c., bribery.

Sec. 8. If any person shall, directly or indirectly, give or procure to be given, or engage to give, any money, gift or reward, or any office, place or employment, upon any engagement, contract or agreement, that the person to whom, or to whose use, or on whose behalf, such gift or promise shall be made, shall, by himself, or any other, procure, or endeavor to procure, the election of any person to any office, at any election by the electors, or any public body, under the constitution or laws of this territory, the person so offending shall, on conviction, be adjudged guilty of bribery, and punished by imprisonment and hard labor for a term not exceeding five years.

Receiving money or office on such agreement, bribery.

Sec. 9. Every person who shall, by himself or another, to his use, or on his behalf, accept or receive any such money, gift or reward, office, place or employment, or any promise or security therefor, upon any such engagement, contract or agreement as specified in the preceding section, shall be adjudged guilty of bribery, and shall forfeit the full amount of such money, gift or reward, and shall, moreover, be punished by imprisonment and hard labor for a term not exceeding five years.

Any person having a right to vote, receiving a bribe, how punished.

Sec. 10. If any person who shall have or claim to have a right to vote in any election authorized to be held by the organic law or the laws of this territory, shall ask, receive or take any money or other reward by way of gift, loan or other device, or agree or contract for any money gift, office, employment or other reward whatsoever, to give his vote, or refuse or forbear to give his vote in any such election, the person so offending shall, on conviction, be adjudged guilty of bribery, and shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment.

Bribery of voter, how punished.

SEC. 11. If any person, by himself, or any person employed by him, shall, by any gift or reward, office or employment, or by any promise, agreement or security therefor, corrupt or procure, or attempt to corrupt or procure, any person who shall have or claim to have a right to vote at any election, to give or forbear to give his vote at such election, the person so offending shall, on conviction, be adjudged guilty of bribery, and punished as in the next preceding section is prescribed.

Selling office or deputation thereof, how punished.

SEC. 12. Every person holding or exercising any office or public trust under the laws of this territory, or the act of congress organizing this territory, who shall, for any reward or gratuity, or any valuable consideration, paid, or agreed to be paid, directly or indirectly, grant, bargain or sell such office or any deputation thereof, or grant the right or authority to discharge any of the duties thereof to another, shall, on conviction, be punished by confinement and hard labor not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Buying or agreeing to pay for such office, how punished.

SEC. 13. Every person who shall give, or make any agreement to give, any money, property, right in action, or other gratuity or reward, in consideration of any such bargain, grant or deputation of an office, or any part thereof, shall, upon conviction, be punished as prescribed in the last preceding section.

Construction and qualification of two preceding sections.

SEC. 14. The two preceding sections shall not be construed to extend to the appointment of a deputy by any officer authorized by law to have a deputy, so that no gratuity or reward be paid, or agreed to be paid, for such deputation.

Such grant or deputation of office declared void, saving acts done previous to conviction

SEC. 15. Every grant or deputation of office made contrary to the foregoing provisions shall be void; but all official acts done before conviction under this act, by any deputy of an officer authorized to make such appointment, shall be valid.

Oppression, partiality, &c., in public officer, how punished.

SEC. 16. Every person exercising or holding any office or public trust who shall be guilty of wilful and malicious oppression, partiality, misconduct, or abuse of authority in his official capacity or under color of his office, shall, on conviction, be punished by imprisonment in a county jail for a term not exceeding one year, and fine not exceeding one thousand dollars.

Fraud committed by public officer, how punished.

SEC. 17. Every officer or public agent of this territory, or of any county, who shall commit any fraud in his official capacity or under color of his office, shall be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine.

Disqualifications annexed to commission of preceding offences.

SEC. 18. Every person who shall be duly convicted of any of the offences mentioned in the preceding sections of this act, shall be forever disqualified from holding any office of honor, trust or profit under the laws of this territory, and from voting at any election.

Punishment for exacting illegal fees.

SEC. 19. Every officer who shall, by color of his office, unlawfully and wilfully exact, or demand and receive, any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall, upon conviction, be adjudged guilty of a misdemeanor, punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Collector unlawfully collecting taxes, punishment.

SEC. 20. Every collector of the revenue who shall unlawfully collect taxes when none are due, or shall wilfully and unlawfully exact or demand more than is due, shall, upon conviction, be adjudged guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

General provisions touching the misconduct of public officers.

SEC. 21. Every officer or person holding any trust or appointment, who shall be convicted of any wilful misconduct or misdemeanor in office, or neglect to perform any duty enjoined on him by law, where no special provision is made for the punishment of such misdemeanor, misconduct or negligence, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (*m*)

Forfeiture of office declared.

SEC. 22. Every officer who shall be convicted of any official misdemeanor or misconduct in office, or who shall be convicted of any offence which, by this or any other statute, is punishable by disqualification to hold office, shall, in addition to the other punishments prescribed for such offences, forfeit his office.

Usurpations of office, how punished.

SEC. 23. If any person shall take upon himself any office or public trust in this territory, and exercise any power to do any act appertaining to such office or trust, without a lawful appointment or deputation, he shall, upon conviction, be adjudged guilty

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(*m*) The fifth section of the act concerning justices of the peace, in the Rev. Code of 1825, embraces the same offence described in this section, in construing which the supreme court held, in the case of the State vs. Gardner, 2 Missouri Rep., 23, that the word "wilful" implied that the act was *knowingly and corruptly* done, and must be so charged in an indictment.

of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

Penalty for attempting unlawfully to influence voters.

SEC. 24. If any person by menaces, threats and force, or by any other unlawful means, either directly or indirectly, attempt to influence any qualified voter in giving his vote, or to deter him from giving the same, or disturb or hinder him in the free exercise of his right of suffrage, at any election held under the laws of this territory, the person so offending shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

Penalty for voting more than once at the same election.

SEC. 25. Every person who shall at the same election vote more than once, either at the same or a different place, shall, on conviction, be adjudged guilty of a misdemeanor, and be punished by fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding three months.

Penalty for voting without being qualified.

SEC. 26. Every person, not being a qualified voter according to the organic law and the laws of this territory, who shall vote at any election within this territory, knowing that he is not entitled to vote, shall be adjudged guilty of a misdemeanor, and punished by fine not exceeding fifty dollars.

Penalty for fraudulently giving voter printed tickets, &c.

SEC. 27. Any person who designedly gives a printed or written ticket to any qualified voter of this territory, containing the written or printed names of persons for whom said voter does not design to vote, for the purpose of causing such voter to poll his vote contrary to his own wishes, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Penalty for printing or circulating fraudulent tickets.

SEC. 28. Any person who shall cause to be printed and circulated, or who shall circulate, any false and fraudulent tickets, which, upon their face, appear to be designed as a fraud upon voters, shall, upon conviction, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

This act to take effect and be in force from and after its passage.

CHAPTER 53.

CRIMES AND PUNISHMENTS.

An Act defining the punishment of offences against public morals and decency.

§ 1. Bigamy defined, how punished.
2. Cases excepted.
3. Second marriage without the territory, but cohabitation within, adjudged bigamy.
4. Where indictment may be found and trial had.
5. Punishment on the party not before married.
6. Incest, how punished.
7. Crime against nature.
8. Open and notorious adultery, public indecency, &c., how punished.
9. Fornication by guardian with his ward under eighteen, &c., how punished.
10. Penalty on ministers, &c., solemnizing marriages in certain cases.
11. Removing dead bodies from graves, how punished.
12. Receiving bodies so removed.
13. Opening graves with intent to remove, &c., punishment.
14. Exception to three preceding sections.
15. Setting up or keeping certain gaming tables or devices; punishment.
16. Betting on such gaming table or other devices; punishment.
17. Suffering devices mentioned in fifteenth section to be set up in any house.
18. Keeping a common gaming house, or bawdy house; penalty.
19. Leasing houses for the purposes set forth in the four preceding sections; penalty.
20. Who is deemed the keeper of gaming tables, houses, and brothels.
21. Lease of such houses declared forfeited.
22. Participators in such games compelled to testify, but not against themselves.
23. Duties of judge or justice, having knowledge of gaming table within his county.
24. Shall issue a warrant to apprehend the keeper, when.
§ 25. Power of the officer charged with the execution of such warrant.
26. Gaming table to be destroyed, how.
27. Wagering on elections prohibited.
28. Disturbance of public worship.
29. Keeping liquors or wines within a mile of camp-meeting, how punished.
30. The same offence punished by stripes, where the offender is a negro or mulatto.
31. Laboring, or compelling others to labor on Sunday, a misdemeanor.
32. Except where some other day is observed as a Sabbath.
33. Horse-racing, cock-fighting, card playing, on Sunday, a misdemeanor.
34. Selling goods, keeping open tippling houses, on Sunday; punishment for.
35. Selling drugs, medicines, &c., excepted.
36. Selling poisons without labels, or to minors, or slaves, without written authority from guardian or master, punished.
37. Practising physicians not required to label, &c.
38. Cruelty to animals punished.
39. Cruelty to slaves punished.
40. Wilfully breaking open sealed letter, without authority, &c., how punished.
41. Publishing contents of letter so opened.
42. Not to extend to breaking open letters, when punished by laws of United States.
43. Running horse, &c., upon public road or highway; punishment.
44. Running horses to try speed on public road or highway; punishment for.
45. Disqualifications annexed to the commission of felony enumerated in this act.
46. Additional disqualifications to offences specified in sixth and seventh sections.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Bigamy defined.

SECTION 1. Every person having a husband or wife living, who shall marry any other person, whether married or single, (except in the cases specified in the next section,) shall, on conviction, be adjudged guilty of bigamy, and punished by confinement and hard labor not exceeding five years, or in a county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

How punished.

SEC. 2. The last section shall not, by reason of any former marriage, extend to any person again marrying in either of the following cases: *First*, where the husband or wife, by such former marriage, shall have been absent for seven successive years, without being known to such person to be living; nor, *Second*, where the husband or wife, by such former marriage, shall have been absent, and continually remaining without the United States and their territories, for seven successive years; nor, *Third*, where such former marriage shall have been dissolved by legislative enactment, or other competent authority, and such person is not by law prohibited from again marrying, or the time of such disability has expired; nor, *Fourth*, where such former marriage shall have been declared void by competent authority; nor, *Fifth*, where such former marriage was contracted by such persons while under the age of legal consent; the age of legal consent, as intended by this act, shall be, of males, fifteen years, and of females, twelve years; nor, *Sixth*, where the husband or wife, by such former marriage, shall have been sentenced to confinement and hard labor for life.

Cases excepted.

SEC. 3. Every person having a husband or wife living, who shall marry another person without this territory, in any case where such marriage would be punishable if contracted or solemnized within this territory, and shall afterwards cohabit with such other person within this territory, shall be adjudged guilty of bigamy, and punished in the same manner as if such second or subsequent marriage had taken place within this territory.

Second marriage without the territory, but cohabitation within, adjudged bigamy.

SEC. 4. An indictment for bigamy, as defined in the preceding sections, may be found, and proceedings, trial, conviction, judgment, and execution thereon, had, in the county in which such second or subsequent marriage or the cohabitation shall have taken place, or in the county in which the offender may be apprehended.

Where indictment may be found and trial had.

SEC. 5. If any unmarried person shall knowingly marry the husband or wife of another, in any case where such husband or wife would be punished according to the foregoing provisions, such person shall, upon conviction, be punished by confinement and hard labor not exceeding five years, or in the county jail not exceeding six months, or by fine not less than five hundred dollars, or by both such fine and imprisonment.

Punishment on th party not before married.

Incest, how punished.

SEC. 6. Persons within the degrees of consanguinity, within which marriages are by law declared to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall, upon conviction, be punished by confinement and hard labor not exceeding seven years.

Crime against nature. Punishment.

SEC. 7. Every person who shall be convicted of the detestable and abominable crime against nature, committed with mankind or with beast, shall be punished by confinement and hard labor not less than ten years.

Open and notorious adultery, public indecency, &c., how punished.

SEC. 8. Every person who shall live in a state of open and notorious adultery, and every man and woman (one or both of whom are married, and not to each other,) who shall lewdly and lasciviously abide and cohabit with each other, and every person, married or unmarried, who shall be guilty of open, gross lewdness, or lascivious behaviour, or of any open and notorious act of public indecency, grossly scandalous, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding three hundred dollars, or by both such fine and imprisonment. (*o*)

Fornication by guardian with his ward, under eighteen, &c., how punished.

SEC. 9. If any guardian of any white female under the age of eighteen years, or any other person to whose care or protection any such female shall have been confided, shall defile her by carnally knowing her, he shall, in cases not in this act otherwise provided for, be punished by confinement and hard labor not less than two years, or by imprisonment in a county jail not less than six months, and a fine not exceeding one thousand dollars. (*p*)

Penalty on minister, &c., solemnizing marriages in certain cases.

SEC. 10. Every person who shall solemnize any marriage, having knowledge of any fact which renders such marriage criminal in either of the parties, under the preceding provisions of this act, or where either of the parties shall be under the age of legal consent, or where, to his knowledge, any other legal impediment exists to such marriage, shall, on conviction, be adjudged guilty of a misdemeanor, and be punished by imprisonment in a county jail not exceeding one year, or by fine not less than five hundred dollars, or by both such fine and imprisonment.

Removing dead bodies from graves, how punished.

SEC. 11. Every person who shall remove the dead body or remains of any human being from the grave, or other place of

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(*o*) See State vs. Helm & Thornhill; 6 Missouri Rep., 263; Damron vs. the State; Missouri Rep., 494.

(*p*) See State vs. Acuff, 6 Missouri Rep., 54.

interment or sepulture, for the purpose of selling the same, or for the purpose of dissection, or any surgical or anatomical experiment or preparation, or from mere wantonness or mischief, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Receiving bodies so removed.

SEC. 12. Every person who shall receive the dead body or remains of any human being, knowing the same to have been disinterred contrary to the provisions of the preceding section, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in that section specified.

Opening graves with intent to remove, &c., punishment.

SEC. 13. Every person who shall open the grave, or other place of interment or sepulture, with the intent to remove the dead body or remains of any human being, for any of the purposes specified in the eleventh section of this act, or to steal the coffin, or any vestment or other article, or any part thereof, interred with such body, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in the said eleventh section is specified.

Exception to three preceding sections.

SEC. 14. The provisions of the three last sections shall not extend to any person who shall open a grave or other place of sepulture or interment, or remove, sell or receive the body of any deceased person, for the purpose of dissection, or some surgical or anatomical experiment, examination, or preparation, with the knowledge and consent of the near relations of such deceased person, nor to the disinterment or removal, for such purpose, of the body of any criminal executed for crime, or of the body of a slave, with the consent of his owner.

Setting up or keeping certain gaming tables or devices.

SEC. 15. Every person who shall set up, or keep, any table or gambling device, commonly called A. B. C., faro bank, E. O., roulette, equality, or any kind of gambling table or gambling device, adapted, devised and designed for the purpose of playing any game of chance, for money or property, and shall induce, entice, or permit any person to bet, or play at or upon any such gaming table or gambling device, or at or upon any game played at or by means of such table or gambling device, or on the side or against the keeper thereof, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, and by fine not exceeding one thousand dollars.

Punishment.

Betting on such gaming table or device.

SEC. 16. Every person who shall bet any money or property upon any gaming table, bank, or device, prohibited by the preceding section, or at or upon any other gambling device, or who shall bet upon any game, played at or by means of any such gaming table or other gambling device, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding twenty-five dollars nor less than ten dollars. (q)

Punishment.

Suffering devices mentioned in 15th section to be set up in any house.

SEC. 17. Every person who shall permit any gaming table, bank, or device, prohibited by the fifteenth section, to be set up or used for the purpose of gaming in any house, building, shed, booth, shelter, lot, or other premises, to him belonging or by him occupied, or of which he hath, at the time, the possession or control, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars nor less than fifty dollars, or imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

Punishment.

Keeping a common gaming house or bawdy house.

SEC. 18. Every person who shall set up or keep a common gaming house, or a bawdy house or brothel, shall, on conviction, be adjudged guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars.

Penalty.

Leasing houses for the purposes set forth in the four preceding sections.

SEC. 19. Every person who shall knowingly lease or let to another any house or other building, for the purpose of setting up or keeping therein any of the gaming tables, banks or devices prohibited by the preceding provisions, or for the purpose of being used or kept as a gaming house, brothel or bawdy house, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding three months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Penalty.

Who is deemed the keeper of gaming tables, houses and brothels.

SEC. 20. Every person appearing or acting as master or mistress, or having the care, use, or management, for the time, of any prohibited gaming table, bank, or device, shall be deemed a keeper thereof; and every person who shall appear or act as master or mistress or having the care or management of any house or building, in which any gaming table, bank or device is set up or kept, or of any gaming house, brothel or bawdy house, shall be deemed the keeper thereof.

Lease of such houses declared forfeited.

SEC. 21. Whenever any lessee of any house or building shall be convicted of suffering any prohibited gaming table, bank or device to be set up, or kept or used therein, for the purpose of gaming, or of keeping in the same a bawdy house, brothel or common gaming house, lease or the agreement for letting such house or building shall become void, and the lessor may enter on the premises so let, and shall have the same remedies for the recovery thereof as in the case of a tenant holding over his term.

(q) See Eubanks vs. The State; 5 Missouri Rep., 450.

Participators in such games compelled to testify, but not against themselves.

Sec. 22. No person shall be incapacitated or excused from testifying, touching any offence committed by another against any of the foregoing provisions relating to gaming, by reason of his having betted or played at any of the prohibited games or gaming devices; but the testimony which may be given by such person shall in no case be used against him. (r)

Duty of judge or justice having knowledge of gaming table within his county, to issue warrant.

Sec. 23. Whenever any judge or justice of the peace shall have knowledge, or shall receive satisfactory information, that there is any prohibited gaming table or gambling device kept or used within his county, it shall be his duty forthwith to issue his warrant, directed to the sheriff or any constable, to seize and bring before said judge or justice such gaming table or other device.

Shall issue a warrant to apprehend the keeper, when.

Sec. 24. If any judge or justice have knowledge, or shall be satisfactorily informed, of the name or description of the keeper of any such prohibited gaming table or device, he shall also issue his warrant to apprehend such keeper, and bring him before such judge or justice.

Power of the officer charged with the execution of such warrant.

Sec. 25. The officer who shall be charged with the execution of any warrant specified in either of the two last sections, shall have power, if necessary, to break open doors for the purpose of executing the same, and for that purpose may summon to his aid the power of the county.

Gaming table to be destroyed, how.

Sec. 26. It shall be the duty of every judge or justice of the peace, before whom any such prohibited gaming table or device shall be brought, to cause the same to be publicly destroyed by burning or otherwise.

Wagering on elections prohibited

Sec. 27. Every person who shall bet or wager any money or property, or other valuable thing, on the result of any election, authorized by the constitution or laws of the United States or of this territory, or on any vote to be given at such election, or who shall knowingly become stakeholder of any such bet or wager, shall be punished by fine not exceeding fifty dollars.

Penalty.

Disturbance of public worship.

Sec. 28. (s) Every person who shall wilfully, maliciously or contemptuously disquiet or disturb any congregation or assembly of people, met for religious worship, by making a noise, or by rude and indecent behavior, or profane discourse, within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace or assault any person there being, shall be deemed guilty of a misdemeanor and punish-

Penalty for.

(r) See Ward vs. The State, 2 Missouri Rep., 121.

(s) Circuit courts and justices of the peace have concurrent jurisdiction where the fine is limited to one hundred dollars, except assaults and batteries, of which the justices have exclusive jurisdiction. See Clay and others vs. The State, 6 Missouri Rep., 603.

ed by fine not exceeding one hundred dollars; and if unable to pay the fine, by confinement in the county jail not exceeding three months.

Keeping liquors or wines within a mile of camp-meetings, how punished.

Sec. 29. Every person who shall erect or keep a booth, tent, stall or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous or fermented liquors, or any drink of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field-meeting for religious worship, during the time of holding such meeting, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding ten dollars.

If offender is a negro or mulatto, punished by stripes.

Sec. 30. If a negro or mulatto be guilty of the offence specified in the preceding section, he shall, upon conviction before a justice of the peace, be punished by ten stripes.

Laboring, or compelling others to labor, on Sunday.

Sec. 31. Every person who shall either labor himself, or compel his apprentice, servant or slave, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding five dollars.

Penalty.

Except when some other day is observed as a Sabbath.

Sec. 32. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so that he observes such Sabbath, nor to prohibit any ferryman from crossing passengers on any day in the week.

Horse-racing, cock-fighting, card-playing on Sunday.

Sec. 33. Every person who shall be convicted of horse-racing, cock-fighting, or playing at cards, or game of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

Penalty.

Selling goods, keeping open tippling houses on Sunday, punishment for.

Sec. 34. Every person who shall expose to sale any goods, wares or merchandise, or shall keep open any ale or porter house, grocery, or tippling shop, or shall sell or retail any fermented or distilled liquor, on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars. (*t*)

Selling drugs, medicines, &c., excepted.

Sec. 35. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity.

Selling poisons without labels, or to minors or slaves

Sec. 36. Every person who shall sell, or deliver to any other, any arsenic, corrosive sublimate, prussic acid, or any other sub-

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(*t*) No particular Sunday need be proved, provided the one proved be within twelve months before the finding of the indictment. Frazier vs. The State; 5 Missouri Rep., 536. See Brua vs. The State, 8 Missouri Rep., 496.

stance or liquid usually denominated poisonous, without having the word "poison" plainly written or printed on a label attached to the vial, box, vessel or package containing the same; or who shall sell or deliver any tartar emetic, without having the true name written or printed on a label and attached to the vial, box, vessel or package containing the same, or who shall sell or deliver any such substance or liquid to any minor or slave, without a written permission from the guardian of such minor or the master of such slave, specifying the kind of drug that such minor or slave is authorized to purchase, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding fifty dollars.

Without written authority from guardian or master, how punished.

SEC. 37. So much of the preceding section as requires the word "poison," or the name of the drug sold or delivered, to be labelled on the box, vial or other package containing the same, shall not extend to any practising physician who shall deliver any of the articles therein mentioned, with a prescription for the use of the article.

Practising physicians not required to label, &c.

SEC. 38. Every person who shall maliciously and cruelly maim, beat, or torture any horse, ox, or other cattle, whether belonging to himself or another, shall, on conviction, be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars.

Cruelty to animals punished.

SEC. 39. Every person who shall cruelly or inhumanly torture, beat, wound or abuse any slave in his employment, or under his charge, power or control, whether belonging to himself or another, shall, on conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Cruelty to slaves punished.

SEC. 40. If any person shall wilfully open, or read, or cause to be read, any sealed letter, not addressed to himself, without authority to do so from the writer thereof, or from the person to whom it is addressed, he shall, on conviction, be adjudged guilty of a misdemeanor, and shall be punished by fine not exceeding two hundred and fifty dollars, or by imprisonment in a county jail not exceeding three months.

Wilfully breaking open any sealed letter without authority, &c.

How punished.

SEC. 41. Every person who shall publish the whole or any part of the contents of such letter, without the authority of the writer thereof, or of the person to whom it is addressed, knowing the same to have been unlawfully opened, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in the preceding section is specified.

Publishing contents of letter so opened.

Punishment.

SEC. 42. The two last sections shall not extend to the breaking open of letters which shall be punishable by the laws of the United States.

Not to extend to certain cases.

Running horse, &c., upon public highway, &c., punishment for.

Sec. 43. If any person shall run or cause to be run, upon any public road or highway in common use in this territory, any horse or horses so as to interrupt travellers thereon, or put to fright the horses or other animals by them rode or driven, he shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than five nor more than twenty dollars.

Running horses to try speed on public highway, &c., punishment for.

Sec. 44. If two or more persons shall run, or cause to be run, a match horse-race, in any public road in common use, for the purpose of trying the speed of their horses, every person so offending shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than five nor more than twenty dollars.

Disqualifications, &c.

Sec. 45. Every person who shall be convicted of any felony, punishable under any of the provisions of this act, shall be thereafter disqualified from holding any office of honor, profit or trust, or voting at any election, within this territory.

Additional disqualifications.

Sec. 46. Every person who shall be convicted of any of the offences specified in the sixth and seventh sections of this act, shall, in addition to the disabilities specified in the last section, be incompetent to be sworn as a juror or witness in any cause, civil or criminal.

This act to take effect and be in force from and after its passage.

CHAPTER 54.

CRIMES AND PUNISHMENTS.

An Act in relation to the general provisions regulating crimes and punishments.

§ 1. Punishment for attempts to commit offences.
2. When attempts not indictable.
3. Proceedings against persons for felony in another state, &c.
4. What defendant may plead in his defence.
5. Punishment of principals in second degree, and accessories before the fact.
6. Who deemed accessories after the fact, and how punished.
7. Punishment for second offences.
§ 8. Convicts in other states liable to punishment for second conviction.
9. Sentence of persons convicted of two or more offences at the same time.
10. When imprisonment may extend a life-time; never to be less than two years.
11. No fine can be imposed, when prisoner is sent. Confinement, &c.
12. Punishment limited in certain cases.
13. Misdemeanors, where no punishment is prescribed, punishment by fine, or imprisonment, or both.

§ 14. Defendant may be convicted of a less degree of the offence charged.
15. Where no fine is prescribed in misdemeanor, fine may be imposed by court.
16. Acquittal is a bar to a prosecution for the same offence, and every inferior degree thereof.
17. When defendant may be tried again; when not.
18. Acquittal may be pleaded in bar, when.
19. Minor convicts, under sixteen, to be sentenced to county jail, &c.
20. Civil rights suspended during imprisonment.
21. Persons of convicts protected by the law from injury, &c.
22. Forfeiture of estates abolished.
23. Benefit of clergy abolished.
24. How disabilities may be removed.
25. How removed in case of minor convicts.
26. Civil action declared not merged in a felony.
27. Slaves punished by stripes.
28. How tried, and before whom.
29. When jury shall be summoned.
30. Fines under one hundred dollars recoverable before a justice of the peace.
§ 31. Fines, forfeitures, &c., recoverable by indictment, or before justice where it does not exceed one hundred dollars.
32. Assaults and batteries not indictable; how to be prosecuted.
33. Jurisdiction of district courts and justices of the peace, in criminal cases, defined.
34. Slaves convicted of felonies not capital; how punished.
35. Civil remedies against owner of a slave guilty of certain offences against persons or property.
36. Definition of the term "felony."
37. Definition of the term "infamous crime."
38. Definition of the term "misdemeanor."
39. Definition of the terms "crime," "offence," and "criminal offence."
40. Construction of the term "personal property."
41. What the term "real property" includes.
42. What the term "property," includes.
43. What the term "person" is construed to mean.
44. Persons with respect to whom any intent to defraud may be charged.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Punishment for attempts to commit offences.

SECTION 1. Every person who shall attempt to commit an offence prohibited by law, and, in such attempt, shall do any act towards the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows: *First*, if the offence attempted to be committed be such as is punishable by the death of the offender, the person convicted of such attempt shall be punished by confinement and hard labor not exceeding ten years; *second*, if the offence so attempted be punishable by confinement and hard labor, the person convicted of such attempt shall be punished by confinement and hard labor for a term not exceeding one-half of the longest time of imprisonment prescribed upon a conviction for the offence so attempted; *third*, if the offence so attempted be punishable either by confinement and hard labor or in a county jail, the person so convicted of such attempt shall be punished by imprisonment in the county jail not exceeding one year, nor less than two months; *fourth*, if the offence so attempted be punishable by imprisonment in the county jail and fine, the offender convicted of such attempt may be punished by both imprisonment and fine, or either, not exceeding one-half the longest time of imprisonment, and one-half of the greatest fine which may be imposed upon a conviction for the offence so attempted; *fifth*, if the offence attempted be punishable by fine only, the offender convicted of such attempt shall be liable to a fine not exceeding one-half of the greatest fine which may be imposed upon a conviction of the offence so attempted.

When attempts not indictable.

SEC. 2. No person shall be convicted of an assault with intent to commit a crime, or of any other attempt to commit any offence, when it shall appear that the crime intended or the offence attempted was perpetrated by such person at the time of such assault, or in pursuance of such attempt.

Proceedings against persons stealing in another state, &c.

SEC. 3. Every person who shall steal or obtain by robbery the property of another in any other territory, state or country, and shall bring the same into this territory, may be convicted and punished for larceny in the same manner as if such property had been feloniously stolen or taken within this territory; and in any such cases the larceny may be charged to have been committed, and may be indicted and punished in any county into or through which such stolen property shall have been brought. (*u*)

What defendant may plead in his defence.

SEC. 4. Every person prosecuted under the last section may plead a former conviction or acquittal for the same offence in another territory, state or country; and if such plea be admitted or established, it shall be a bar to any other or further proceedings against such person.

Punishment of principals in the second degree and accessories before the fact.

SEC. 5. Every person who shall be a principal in the second degree in the commission of any felony, or who shall be an accessory (*v*) to any murder or other felony before the fact, shall, upon conviction, be adjudged guilty of the offence in the same degree, and be punished in the same manner, as herein prescribed with respect to the principal in the first degree. (*w*)

Who deemed accessories after the fact, and how punished.

SEC. 6. Every person who shall be convicted of having concealed any offender after the commission of any felony, or of having given to such offender any other aid, knowing that he has committed a felony, with the intent and in order that he may escape or avoid arrest, trial, conviction or punishment and no other, shall be deemed an accessory after the fact, (*x*) and, upon conviction, shall be punished by confinement and hard labor not

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(*u*) See practice and proceedings in criminal cases, Art. 4.

(*v*) A free man accessory to a felony committed by a slave is punishable in the same manner as though the principal was a free man. Loughridge vs. the State, 6 Missouri Rep., 596.

(*w*) See practice and proceedings in criminal cases, Art. 4, Secs. 12 and 13.

(*x*) See practice and proceedings in criminal cases, Art. 4, Secs. 12 and 13.

exceeding five years, or in the county jail not exceeding one year nor less than six months, or by fine not less than four hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in a county jail not less than three months.

Punishment for second offences.

SEC. 7. If any person convicted of any offence punishable by confinement and hard labor, or of petit larceny, or of any attempt to commit an offence which, if perpetrated, would be punishable by confinement and hard labor, shall be discharged either upon pardon or upon compliance with the sentence, and shall subsequently be convicted of any offence committed after such pardon or discharge, he shall be punished as follows: *First*, if such subsequent offence be such that upon a first conviction the offender would be punishable by confinement and hard labor for life, or for a term which, under this act, might extend to confinement for life, then such person shall be punished by confinement and hard labor for life; *second*, if such subsequent offence be such that upon a first conviction the offender would be punishable by imprisonment for a limited term of years, then such person shall be punished by confinement and hard labor for the longest term prescribed upon a conviction for such first offence; *third*, if such subsequent conviction be for petit larceny, or for an attempt to committ an offence which, if perpetrated, would be punishable by confinement and hard labor, the person convicted of such subsequent offence shall be punished by confinement and hard labor for a term not exceeding five years.

Convicts in other states liable to punishment for second conviction.

SEC. 8. Every person who shall have been convicted in any of the United States, or in any district or territory thereof, or in a foreign country, of an offence which, if committed in this territory, would be punishable by the laws of this territory by confinement and hard labor, shall, upon conviction for any subsequent offence within this territory, be subject to the punishment herein prescribed upon subsequent convictions, in the same manner and to the same extent as if such first conviction had taken place in a court of this territory.

Sentence of persons convicted of two or more offences at the same time.

SEC. 9. When any person shall be convicted of two or more offences before sentence shall have been pronounced upon him for either offence, the imprisonment to which he shall be sentenced upon the second or other subsequent conviction shall commence at the termination of the term of imprisonment to which he shall be adjudged upon prior convictions.

When imprisonment may extend to lifetime; never to be less than two years.

SEC. 10. Whenever any offender is declared by law punishable, upon conviction, by confinement and hard labor for a term not less than any specified number of years, and no limit to the duration of such imprisonment or confinement is declared, the offender may be sentenced to imprisonment during his natural life, or for any number of years not less than such as are prescribed; but no person shall, in any case, be sentenced to confinement and hard labor for any term less than two years.

No fine can be imposed when prisoner is sent to confinement, &c.

Sec. 11. Whenever any offender is declared by law punishable upon conviction by confinement and hard labor, or by imprisonment in a county jail, or by fine, or by both such fine and imprisonment, it shall not be construed to authorize the imposition of a fine where the offender is sentenced to confinement and hard labor.

Punishment limited in certain cases. New provision.

Sec. 12. Whenever any offender is declared by law punishable, upon conviction, by confinement and hard labor, or by imprisonment in a county jail, or by fine, or by both such fine and imprisonment, and no limit is fixed by law to the duration of imprisonment in the jail or to the fine, in such cases the convict shall, in no instance, be sentenced to a longer term of imprisonment in a county jail than twelve months, nor shall the fine, in any such case, exceed one thousand dollars.

Misdemeanors, how punished when no other punishment is prescribed.

Sec. 13. Whenever any offence is declared by statute to be a misdemeanor, and no punishment is prescribed by that or any other statute, the offender shall be punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding two hundred dollars, or by both such fine and imprisonment.

Defendant may be convicted of a less degree of the offence charged.

Sec. 14. Upon indictment for any offence consisting of different degrees, as prescribed by this act, the jury may find the accused not guilty of the offence charged in the indictment, and may find him guilty of any degree of such offence inferior to that charged in the indictment, or of an attempt to commit such offence. (*y*)

When no fine is prescribed, fine may be imposed by court.

Sec. 15. Upon conviction for any offence punishable by imprisonment in a county jail, in relation to which no fine is by law prescribed, a fine may be imposed upon the offender not exceeding one hundred dollars.

Acquittal is a bar to a prosecution for the same offence and every inferior degree thereof.

Sec. 16. When a defendant shall be acquitted or convicted upon any indictment for any offence consisting of different degrees, as specified in this act, he shall not thereafter be tried or convicted of a different degree of the same offence, nor for an attempt to commit the offence charged in the indictment or any degree thereof, provided he could have been legally convicted of such degree of offence or attempt to commit the same, under the first indictment.

(*y*) Provided such offence of inferior degree be embraced in the allegations of the indictment; State vs. Shoemaker, 7 Missouri Rep., 180; Mallison vs. The State, 6 *ib.*, 399; Plummer vs. The State, 6 *ib.*, 240. Under this section it is held that, on an indictment for murder, When defendant may be tried again, when not

SEC. 17. When a defendant shall have been acquitted of a criminal charge, upon trial, on the ground of variance between the indictment and the proof, or upon any exceptions to the form or substance of the indictment, or where he shall be convicted, but the judgment shall for any cause be arrested, he may be tried and convicted on a subsequent indictment for the same offence or any degree thereof. (*z*)

Acquittal may be pleaded in bar, when.

SEC. 18. When a defendant shall have been acquitted upon a trial on the merits and facts, and not on any ground stated in the last section, he may plead such acquittal in bar to any subsequent accusation for the same offence, notwithstanding any defect in form or substance in the indictment upon which such acquittal was had. (*aa*)

Minor convicts under sixteen to be sentenced to county jail, &c.

SEC. 19. Whenever any person under the age of sixteen years shall be convicted of any felony, he shall be sentenced to imprisonment in a county jail not exceeding one year, instead of confinement and hard labor, as prescribed by the preceding provisions of this act.

Civil rights suspended during imprisonment.

SEC. 20. A sentence of confinement and hard labor for a term less than life suspends all civil rights of the person so sentenced during the term thereof, and forfeits all public offices and trusts, authority and power; and a person sentenced to such confinement for life shall thereafter be deemed civilly dead.

Persons of convicts protected by the law from injury, &c.

SEC. 21. The person of a convict sentenced to confinement and hard labor is under the protection of the law; and any injury to his person, not authorized by law, shall be punishable in the same manner as if he was sentenced or convicted.

Forfeiture of estates abolished.

SEC. 22. No conviction of any person for any offence whatever shall work corruption of blood or any forfeiture of any estate, or any right or interest therein; and all forfeiture in cases of suicide or death by casualty, or where any person shall flee from justice, are abolished.

Benefit of clergy abolished.

SEC. 23. The benefit of clergy in criminal cases, and all appeals of felony, are forever abolished.

How disabilities may be removed.

SEC. 24. Whenever a person shall be sentenced upon a conviction for any offence, and is thereby, according to the provisions of this act, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this territory, such disabilities may be re-

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defendant may, as at common law, be convicted of manslaughter; Watson's case, 5 Missouri Rep., 497; Mallison's case, 6 *ib.*, 399; Plummer's case, 6 *ib.*, 240. See, also, practice and proceedings in criminal cases, Art. 7, Sec. 1, and Art. 4, Sec. 16.

(*z*) See act concerning practice and proceedings in criminal cases, Art. 8, Sec. 10.

(*aa*) In such cases no appeal or writ of error lies; State vs. Heatherly, 4 Missouri Rep., 479; State vs. Spear, 6 *ib*. 644.

moved by a pardon by the governor and not otherwise, (*bb*) except in the case in the next section mentioned.

How removed from minor convicts.

SEC. 25. If such convict shall have committed the offence while within the age of sixteen years, and such conviction shall be for a first offence, all civil disabilities incurred shall be removed, and his competency restored at the expiration of the term of imprisonment to which he shall have been sentenced.

Civil actions declared not merged in a felony.

SEC. 26. In no case shall the right of action of any party injured by the commission of a felony be deemed or adjudged to be merged in such felony, but he may recover the amount of damages sustained thereby, in an action to be brought before any court or tribunal of competent jurisdiction.

Slaves punished by stripes.

SEC. 27. If any slave shall commit petit larceny, or shall steal any neat cattle, sheep or hog, or be guilty of any misdemeanor, or other offence, punishable under the provisions of this act only by fine or imprisonment in a county jail, or by both such fine and imprisonment, he shall, instead of such punishment, be punished, if a male, by stripes on his bare back not exceeding thirty-nine, or if a female, by imprisonment in a county jail not exceeding twenty-one days, or by stripes not exceeding twenty-one, at the discretion of the justice.

How tried and before whom.

SEC. 28. Every slave charged with the commission of any of the offences specified in the last section, shall be tried in a summary manner before a justice of the peace of the county in which the offence is committed; and such justice (if a jury is not required, as provided for in the next section,) shall hear the evidence, determine the cause, and, on conviction, pronounce sentence, and cause the same to be executed.

When jury shall be summoned.

SEC. 29. If any slave or his master, in any case cognizable before a justice of the peace, shall require a jury, the justice shall cause such jury to be summoned, sworn, and empannelled, who shall determine the facts, and assess the punishment in case of conviction, and the justice shall enter judgment and cause the same to be executed.

Fines under one hundred dollars recoverable before a justice of the peace.

SEC. 30. When any offence punishable by fine only, and such fine is limited to one hundred dollars, shall be committed by any person other than a slave, such fine may be recovered by action of debt, to the use of the county, before any justice of the peace of the county in which the offence is committed.

Fines, forfeitures, &c., how recovered.

SEC. 31. Whenever a fine, penalty or forfeiture is or may be inflicted by any statute of this territory for any offence, the same may be recovered by indictment, (except as in the next section is

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(*bb*) See Senate Jour., 1836-37, p. 160; Commonwealth vs. Green, 17 Mass. R., 551; Holdridge vs. Gillespie, 2 J. Ch. R., 35, in note.

provided,) notwithstanding another or different remedy for the recovery of the same may be specified in the act imposing the fine, penalty or forfeiture: *Provided,* that in all cases the fine, penalty or forfeiture shall go to the territory, county, corporation, person or persons to whom the act imposing the same declares it shall accrue.

Assaults and batteries not indictable, &c.

SEC. 32. Assaults and batteries are not indictable, but shall be punished in a summary manner before a justice of the peace, in conformity to the act defining the jurisdiction and regulating the proceedings of justices' courts in cases of breach of the peace.

Jurisdiction of district court and justices of the peace, in criminal cases, defined.

SEC. 33. The district courts shall have exclusive original jurisdiction in all cases of felony, and of all offences not herein declared expressly to be cognizable before a justice of the peace, and concurrent jurisdiction with the justices in the cases specified in the thirtieth and thirty-first sections of this act.

Slaves convicted of felonies not capital, how punished.

SEC. 34. When any slave shall be convicted of a felony punishable by confinement and hard labor, the court before whom such conviction shall be had shall sentence the offender to receive on his bare back any number of stripes not exceeding thirty-nine. (*cc*)

Civil remedies against owner of a slave, &c.

SEC. 35. Every person who shall be injured by the commission of any offence against his person, as specified in the forty-eighth chapter, or against his property, as specified in the forty-ninth chapter of these acts, committed by a slave, shall have an action against the master or owner of such slave for the time, (*dd*) to recover any damages by him sustained, by the commission of such offence, not exceeding in amount the value of the slave. (*ee*)

Definition of the term "felony."

SEC. 36. The term "felony," when used in this act, or any other statute, shall be construed to mean any offence for which the offender, on conviction, shall be liable by law to be punished with death, or confinement and hard labor, and no other. (*ff*)

Definition of the term "infamous crime."

SEC. 37. Whenever the term "infamous crime" is used in this or any other statute, it shall be construed as meaning every offence for which the offender, on conviction or sentence, is declared to be disqualified, or rendered incompetent to be a witness or juror, or to vote at any election, or to hold any office of honor, profit or trust, within this territory.

(*cc*) Fanny vs. The State, 6 Missouri Rep., 142.

(*dd*) See Reed vs. Circuit Court of Howard county, 6 Missouri Rep., 44.

(*ee*) Where the slave of a plaintiff was killed by the slave of defendant, it was held that the case was not embraced by the provisions of this section, it being an injury to the property not specified in the third article; Jennings vs. Kavanagh, 5 Missouri Rep., 28.

(*ff*) See Johnson vs. The State, 7 Missouri Rep., 183. Felonies and misdemeanors not to be joined; Hildebrand vs. The State, 5 Missouri Rep., 548; Nathan vs. The State, 8 Missouri Rep., 631.

Definition of the term "misdemeanor."

SEC. 38. The term "misdemeanor," as used in this or any other statute, shall be construed as including every offence punishable only by fine, or imprisonment in a county jail, or both.

Definition of the terms "crime," "offence," and "criminal offence."

SEC. 39. The terms "crime," "offence" and "criminal offence," when used in this or any other statute, shall be construed to mean any offence, as well misdemeanor as felony, for which any punishment, by imprisonment or fine, or both, may by law be inflicted.

Construction of the term "personal property."

SEC. 40. The term "personal property," as used in this act, shall be construed to mean goods, chattels, effects, evidences of right in action, and all written instruments, by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged or diminished.

What the term "real property" includes.

SEC. 41. The terms "real property," or "real estate," as used in this act, include every estate, interest, and right in lands, tenements and hereditaments.

What the term "property" includes.

SEC. 42. The term "property," as used in this act, includes "personal property" and real property," or "real estate," as defined in the two last sections.

What the term "person" is construed to mean.

SEC. 43. When the term "person" is used in this act to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this territory, or any other territorial government, state, or country, a county, or any other municipal, public or private corporation, which may lawfully own any property within this territory, as well as individuals.

Persons with respect to whom intent to defraud may be charged.

SEC. 44. Where any intent to injure, defraud or cheat is required by law to be shown in order to constitute any offence, it shall be sufficient if such intent be to injure, defraud or cheat the United States, this territory, or any state or country, or the government, or any public office thereof, or any county, city, town or village, or any corporation, body politic, or private individual.

This act to take effect and be in force from and after its passage.

CHAPTER 55.

DEBTORS.

An Act for the relief of debtors.

§ 1. No person to be arrested on *mesne* process.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

No person to be arrested.

SECTION 1. That no person shall be arrested, held to bail or imprisoned in any *mesne* process or execution, issued upon any civil cause whatsoever.

This act to take effect and be in force from and after its passage.

CHAPTER 56.

DEBTORS.

An Act concerning debtors and their securities.

§ 1. When the principal debtor is about to become insolvent.
2. The provisions of this act shall be extended to heirs, executors or administrators.
3. When any surety, his heirs, executors or administrators, pay a debt, they shall have judgment against principal.
§ 4. When there are two or more sureties, judgment goes by default.
5. No surety shall be suffered to confess cr suffer judgment by default.
6. Bail shall recover with interest and costs.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When principal of debtor is about to become insolvent.

SECTION 1. That when any person bound as surety by bond, bill, note or otherwise, for the payment of money or performance of a contract, shall apprehend that the principal debtor for whom he is bound is likely to become insolvent, or emigrate from this territory, without previously satisfying or discharging such debts, dues, demands or obligations, so that it will become impossible or difficult for such surety, after paying, satisfying or discharging such debt, due or demand, to recover the value thereof from such principal debtor, it shall be lawful for such surety, if action shall have occurred on any such bond, bill, note or contract as aforesaid, to require by notice in writing to his creditors, forthwith to put the bond, bill or note, or other contract by which he is bound as aforesaid, in suit, who shall, within twenty days,

Security to give notice to his creditor.

commence an action and proceed with due diligence to judgment and execution thereon; and if such creditors shall fail, or neglect to proceed as aforesaid, the said surety shall be discharged from the performance of said contract.

Provisions extended to heirs, executors or administrators.

Sec. 2. That the provisions of this act shall be extended to the heir, executor or administrator of any deceased surety, against the creditor or his assignee, executor or administrator, upon his compliance with the first section of this act; but nothing herein contained shall be so construed as to extend to the official bonds of public officers, guardians, executors, administrators, or bonds with collateral sureties.

Shall have judgment against principal.

Sec. 3. That when any surety, his heirs, executors or administrators, pay or discharge the debt or contract of his principal, or part thereof, upon judgments rendered against him, he shall have judgment to recover the value or amount so paid or discharged, together with the interest and costs, upon motion in the court where such judgment may have been rendered against such surety, his executors or administrators of such principal debtor, his heirs, executors or administrators.

When two or more sureties, &c., judgment goes by default.

Sec. 4. That in case when there are two or more sureties on any bond, bill, note or contract, and one or more of such sureties are subjected by judgment of any court to the payment of the debt or damage, by default of the principal obligor, and such obligor be insolvent, so that the amount or value thereof cannot be recovered of him, the court, before whom such judgment may be rendered, shall, upon motion of such surety or sureties, grant judgment that they recover against all and every other co-surety, their heirs, executors and administrators, for their and each of their respective shares and proportions of the amount or value of such judgment, with damages and costs.

Surety shall not be suffered to confess or suffer judgment by default.

Sec. 5. That no surety, his heirs, executors or administrators, shall be suffered to confess or suffer judgment by default, so as to distress his principal, if such principal will enter himself defendant to such suit, and tender to such surety, or his legal representatives aforesaid, good collateral security, to be approved by the court before whom such suit is pending.

Bail shall recover with interest and costs.

Sec. 6. That when the special bail of any judgment debtor shall be indemnified by the payment of such judgment or part thereof, it shall be lawful for such bail, his executors, administrator or heirs, to recover the amount of such payment, with interest and costs, upon motion in the same court where judgment was rendered.

This act to take effect and be in force from and after its passage.

CHAPTER 57.

DEMANDS.

An Act for the collection of demands growing out of contracts for sale of improvements on public lands in the territory of Kansas.

§ 1. Contracts, promises, &c., without fraud, valid and may be sued for.

§ 2. Deeds of quit claim and conveyance binding on the grantor.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That all contracts, promises, assumpsits or undertakings, either written or verbal, made in good faith and without fraud, collusion or circumvention, for the sale or purchase of improvements made on the lands owned by the government of the United States, shall be deemed valid in law and equity, and may be sued for and recovered as in other contracts.

Contracts valid and may be sued for.

SEC. 2. That deeds of quit claim, and other conveyance of improvements upon public lands, shall be as binding and effectual in law and equity, between the parties for conveying the title of the grantor, in and to the same, as in cases where the grantor has the fee simple to the premises conveyed.

Deeds of quit claim binding and effectual.

This act shall take effect and be in force from and after its passage.

CHAPTER 58.

DEPOSITIONS.

An Act concerning depositions.

§ 1. Depositions may be obtained.
2. Witness residing out of the territory, commission to issue.
3. Commission, how issued, and to whom directed.
4. Power and duty of the officer under the commission.
5. Witness residing in the territory, no commission necessary.
6. Notice to be given.
7. To adverse non-resident party.
8. Must be served three days before the day of taking, and one day for every twenty-five miles in addition.
9. Special commission to issue on affidavit.
10. To whom directed.
11. Interrogatories to be annexed.
§ 12. Command of commission.
13. Duty of officer.
14. Witnesses examined on oath.
15. Officer may compel attendance of witnesses.
16. Certificate of officer taking depositions.
17. Official character of officer in foreign country, how attested.
18. Official character of officer in U. S., how attested.
19. Exhibits to be enclosed in depositions.
20. When depositions may be read.
21. Residence of witness certified by officer, *prima-facie* evidence.
22. Objections to competency or relevancy, how taken.
23. Court may appoint commissioners.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Depositions may be obtained.

Section 1. Any party to a suit, pending in any court in this territory, may obtain the deposition of any witness, to be used in such suit, conditionally.

Witness residing out of the territory, commission to issue.

Sec. 2. When the witness resides out of this territory, the party desiring his testimony may sue out of the court in which the suit is pending, or out of the office of the clerk thereof, in vacation, a commission to take the deposition of the witness.

Commission, how issued, to whom directed.

Sec. 3. The commission shall be under the seal of the court, and shall be directed to any judge, justice of the peace, or other officer, authorized to take depositions in the state or territory where the witness resides.

Power and duty of the officer under the commission.

Sec. 4. The commission shall authorize such officer to cause to come before him such person or persons as shall be named to him by the party suing the same, and shall command such officer to examine such person touching his knowledge of any thing relating to the matter in controversy, and to reduce such examination to writing, and return the same, annexed to the commission, to the court wherein the action is pending, with all convenient speed.

Witness residing in the territory, no commission necessary.

Sec. 5. When the witness resides in this territory, the deposition may be taken before any judge, or justice of the peace thereof, without any commission or order from any court or clerk.

Notice to be given.

Sec. 6. In all cases where deposition, shall be taken by virtue of any of the preceding sections of this law, the party at whose instance the same shall be taken shall cause notice, in writing, of the time and place of taking such depositions to be served on the adverse party, if he reside in this territory; and if not, then on his attorney of record in the cause. (*a*)

(*a*) Where a deposition was taken between the hours of eight and six, and the notice was to take it between the hours of ten and six, it cannot be read in evidence. Kean vs. Newell, 1 Missouri Rep., 754. A notice to take depositions on the 24th June, between the hours of 8 A. M., and 6 P. M., and on the 25th, 26th, 27th, and 28th, same month and same hours, is insufficient. If the beginning had been confined to a day certain, and the intention of continuing from day to day expressed, the notice would have been good. Benton vs. Craig, 2 Missouri Rep., 198. A notice to take depositions on the 22d of the month, will not authorize the taking of them, by adjournment from day to day, on the 26th, without having commenced the taking on the 22d. Fox vs. Carlisle & Mason, 3 Missouri Rep., 197. Notice was given to take depositions on the 14th of July, to be continued, if necessary, from day to day, until completed; the depositions of two witnesses were taken, commenced on the 14th, and continued from day to day until the 16th, when they were completed. Held, that, as the depositions, from any thing appearing on the face, might have been taken in an hour, something must also appear to justify the delay; and that, unless something did appear, they ought to be suppressed. What was done each day should appear on the record. Bracken vs. March, 4 Missouri Rep., 74. Depositions taken at the appointed time and place, and at a reasonable time of day, are not to be excluded, because the party notified to attend did not arrive until the other party had finished taking the depositions. Waddingham vs. Gamble, 4 Missouri Rep., 465.

To advise non-resident party.

SEC. 7. If neither the adverse party, nor his attorney of record in the cause, reside in this territory, causing such notice to be put up in the office of the clerk of the court, wherein such suit is pending, shall be a sufficient notice.

In what time to be served.

SEC. 8. In all cases where notice is required, by this law, to be served on the adverse party, the same shall be served at least three days before the day of taking the depositions, and one day additional for every twenty-five miles of distance from the place of serving or setting up such notice to the place of taking the depositions.

Special commission to issue on affidavit.

SEC. 9. When a party to any suit pending in any court of record in this territory shall make application to such court, in term time, for a commission to take the examination of witnesses, and shall support the application by affidavit, and shall have given to the adverse party reasonable notice of such application, the court may, upon such terms as it may think proper, award such commission.

To whom directed.

SEC. 10. The commission shall be to such person as the court shall appoint, to be named in the commission, or to any judicial officer of the government, in which the witnesses reside, commanding such person or officer to examine such witnesses (naming them) upon interrogatories.

Interrogatories to be annexed.

SEC. 11. The interrogatories shall be annexed to the commission, and shall be drawn and signed by the parties, or their counsel in the cause, under the sanction and direction of the court.

Command of commission.

SEC. 12. The commission shall further command the person or officer to whom the same is directed to reduce the examination of the witnesses, and their answers to the interrogatories annexed, to writing, and return the same with the commission into the court with all convenient speed.

Duty of officer.

SEC. 13. Such person or officer shall examine the witnesses named in the commission, touching the matters contained in the interrogatories annexed, and none others, at any time and place when and where such witnesses may be found.

Witness examined on oath.

SEC. 14. Every witness examined in pursuance of this law shall be sworn or affirmed to testify the whole truth, and his examination shall be reduced to writing in the presence of the person or officer before whom the same shall be taken.

Officer may compel attendance of witnesses.

SEC. 15. Every person, judge, or justice of the peace, in this territory, required to take the depositions or examination of witnesses, in pursuance of this law, or by virtue of any commission issuing out of any court of record, in this or any other government, shall have power to issue subpœnas for witnesses to appear and testify, and to compel their attendance in the same manner and under the like penalties as any court of record of this territory.

Certificate of officer taking depositions.

SEC. 16. To every deposition or examination, taken by virtue of this law, shall be appended the certificate of the person or officer by or before whom the same shall be taken, showing that the deposition or examination was subscribed and sworn to by the witnesses, and the day on which it was done.

Official character of officer in foreign county, how attested.

SEC. 17. Depositions or examinations, taken by any judge, justice of the peace, or other judicial officer, out of this territory, by virtue of any commission issued in pursuance of this law, shall be accompanied by a certificate of the official character of such officer, attested by the seal of the territory, or the seal of a court of the government in which the depositions or examinations were taken.

Official character of officer in United States, how attested.

SEC. 18. The official character of such officer taking depositions or examinations, within any of the United States, or any of the territories of the United States, authenticated and proved by the certificate and seal of the clerk of any court of record within any county of the state or territory where such officer resides, and certifying, also, that such officer was an acting judge or justice of the peace, and duly commissioned as such at the time when the depositions were taken, shall be a sufficient authentication, any thing in the preceding section notwithstanding.

Exhibits to be enclosed in depositions.

SEC. 19. Depositions or examinations taken by virtue of any of the provisions of this law, and all exhibits produced to the person or officer taking such examinations or depositions, and proved or referred to by any witness, together with the commission and interrogatories, (if any,) shall be inclosed, sealed up and directed to the clerk of the court in which the act is pending.

When depositions may be read.

SEC. 20. Examinations or depositions taken and returned, in conformity to the provisions of this law, may be read and used as evidence in the cause in which they shall have been taken, as if the witness were present, and examined in open court, on the trial thereof, (*b*) *First*, if the witness reside, or is gone out of this territory; *Second*, if he be dead; *Third*, if, by reason of age, sickness, or bodily infirmity, he be unable, or cannot safely attend the court; *Fourth*, if he resides at a greater distance than sixty miles from the place of trial; *Fifth*, if he be gone a greater distance than sixty miles from the place of trial, without the consent or collusion of the party requiring his testimony;

(*b*) Depositions taken in a former suit between the same parties may be read in evidence, unless there be other objections than that having been taken in a former suit. Tindall vs. Johnson, 4 Missouri Rep., 113.

(c) *Sixth*, if he be a judge of the supreme or district court, and engaged in the discharge of his official duties at the time.

Statement of officer *prima facie* evidence, when.

SEC. 21. When the officer taking depositions in virtue of this law shall, in his certificate, state the place of residence of the witness, such statement shall be *prima facie* evidence of the facts.

Objections to competency or relevancy, how taken.

SEC. 22. Every objection to the competency or credibility of a witness examined, or to the competency or relevancy of any question put to him, or of any answer given by him, may be made in the same manner, and with the like effect, as if such witness were personally present.

Court may appoint a commissioner.

SEC. 23. Any court may appoint a commissioner to take depositions in any cause in any foreign country, or in any distant portion of the United States or any part of its territories, when such court shall be satisfied that none of the officers mentioned in this act can be procured, or when the procuring of such officer shall be attended with great expense, trouble or difficulty; and such commissioner shall, when so appointed, be governed in all things by the provisions of this act.

This act to take effect and be in force from and after its passage.

CHAPTER 59.

DEPOSITIONS.

An Act providing for the appointment of commissioners to take depositions in other states.

§ 1. One or more commissioners to be appointed in each state. Their tenure of office. Powers and duties.
2. Effect of their acts.
§ 3. To take an oath, which shall be filed in the office of the secretary of the territory.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

One or more commissioners to be appointed in each state.

Tenure of office.

SECTION 1. That the governor may appoint, in each of the United States, one or more commissioners, to continue in office during the pleasure of the governor for the time being; and every such commissioner shall have power to administer oaths,

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(c) Where no objections were made to the reading of depositions until they were offered in evidence, and then they were objected to on the ground that there was no proof that the witnesses were not within reach of the process of the court, the court very properly allowed that objection to be removed, by the introduction of other testimony. Lepper vs. Chilton, 7 Missouri Rep., 221.

Powers and duties.

and to take depositions and affidavits to be used in this territory, and, also, to take the acknowledgment of deeds, powers of attorney, or other instruments, to be recorded in this territory.

Effect of their acts

Sec. 2. All oaths administered by the said commissioners, all affidavits and depositions taken by them, and all acknowledgments aforesaid, certified by them, shall be as effectual in law, to all intents and purposes, as if done and certified by any justice of the peace or other authorized officer within this territory.

To take an oath.

Sec. 3. Before any commissioners, appointed as aforesaid, shall proceed to perform any of the duties of their office, they shall take and subscribe an oath before any justice of the peace, or other officer authorized to administer oaths, in the territory for which such commissioners may be appointed, that they will faithfully discharge all the duties of their office; which oath shall be filed in the office of the secretary of this territory within six months after the taking of the same.

Oath to be filed with the secretary of the territory.

This act to take effect and be in force from and after its passage.

CHAPTER 60.

DESCENTS AND DISTRIBUTIONS.

An Act concerning descents and distributions.

§ 1. Real and personal estate to whom to descend.
2. Posthumous children to inherit.
3. Rule in case of failure of kindred capable of inheriting.
4. When some are of the half blood and some of the whole blood.
5. When they shall take *per capita*, when *per stirpes*.
§ 6. Advancements to be brought into hotch pot.
7. Alienage of ancestors no bar in making title by descent.
8. Bastards capable of inheriting from their mother.
9. Legitimated, when.
10. Marriages deemed null in law, or dissolved by divorce, issue shall be legitimate.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Real and personal estate, to whom to descend.

Section 1. When any person having title to any real estate of inheritance or personal estate undisposed of, or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend, and be distributed in parcenary, to his kindred, male and female, subject to the payment of his debts, and the widow's dower, in the following course (*a*): *First*, to

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(*a*) *Vide*, Pratte vs. Wright, 5 Missouri Rep., 192.

his children or their descendants, in equal parts; *Second*, if there be no children or their descendants, then to his father, mother, brothers and sisters, and their descendants, in equal parts; *Third*, if there be no children or their descendants, father, mother, brother or sister, nor their descendants, then to the grandfather, grandmother, uncles and aunts, and their descendants, in equal parts; *Fourth*, if there be no children or their descendants, father, mother, brother, sister, or their descendants, grandfather, grandmother, uncle, aunt, nor their descendants, then to the great-grandfathers, great-grandmothers and their descendants, in equal parts; and so on, in other cases, without end, passing to the nearest lineal ancestors, and their children, and their descendants, in equal parts.

Posthumous children to inherit.

SEC. 2. All posthumous children of the intestate shall inherit in like manner as if born in the life-time of the intestate; but no right of inheritance shall accrue to any person other than the children of the intestate, unless they are in being, and capable in law to take, as heirs, at the time of the intestate's death.

Rule in case of failure of kindred, &c.

SEC. 3. If there be no children or their descendants, father, mother, brother nor sister, nor their descendants, nor any paternal nor maternal kindred, capable of inheriting, the whole shall go to the wife or husband of the intestate; and if the wife or husband be dead, it shall go to her or his kindred in the like course as if such wife or husband had survived the intestate, and then died entitled to the estate.

When some are of the whole and others of the half blood.

SEC. 4. When the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood of the intestate, and the other part of the half blood only, those of the half blood shall only inherit half as much as those of the whole blood; but if all such collaterals be of the half blood, they shall have whole portions, only giving to the ascendants double portions.

When they shall take *per capita* and when *per stirpes*.

SEC. 5. When several lineal descendants, all of equal degree of consanguinity to the intestate, or his father, mother, brothers and sisters, or his grandfather, grandmother, uncles and aunts, or any ancestors living, and their children, come into partition, they shall take *per capita* (that is, by persons); where a part of them are dead and a part living, and the issue of those dead have a right to partition, such issue shall take *per stirpes* (that is, the share of the deceased parent).

Advancements to be brought into hotch pot, when.

SEC. 6. Where any of the children of the intestate shall have received in their life-time any real or personal estate, by way of advancement, and shall choose to come into partition with the other parceners, such advancement shall be brought into hotch pot with the estate descended.

Alieange of ancestor no bar to title by descent.

SEC. 7. In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate is or has been an alien.

Bastards may inherit.

SEC. 8. Bastards shall be capable of inheriting and transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

Legitimated, when.

SEC. 9. If a man, having by a woman a child or children, and shall afterwards intermarry with her and shall recognize such child or children to be his, they shall thereby be legitimated.

Issue of certain marriages legitimate.

SEC. 10. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate. (b)

This act to take effect and be in force from and after its passage.

CHAPTER 61.

DETINUE.

An Act concerning the action of detinue.

§ 1. When the clerk shall issue capias in detinue.
2. Duty of officer to whom the execution of capias is charged.
3. When the officer is made co-defendant.
§ 4. When bond is forfeited, what course to be pursued, &c.
5. Court may reduce bail, &c.
6. Court may award inquiry to ascertain value of property, &c.
7. When plaintiff may be barred of title.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When the clerk shall issue capias in detinue.

SECTION 1. In actions of detinue, when the plaintiff files in the proper clerk's office the affidavit of himself, or of some credible person, stating that the property for which the action is brought belongs to him, the value thereof, and that the defendant unlawfully detains the same, the clerk shall issue a writ of capias in detinue, endorse on the writ the amount sworn to, and a direction to the officer to take bail in double that sum.

Duty of officers to whom capias is directed.

SEC. 2. The officer charged with the execution of a "capias in detinue" shall take the defendant and commit him to jail, unless the defendant enter into bond to the plaintiff, with sufficient security, conditioned that if judgment is given against him in the action, he will deliver to the plaintiff the property thereby recovered, and pay the damages for its detention and costs of suit; and the officer shall return the bond with the writ as in other cases.

(b) *Vide*, the case of Lincecum vs. Lincecum, 3 Missouri Rep., 441, and note the difference in the language of the first section of the act concerning divorce and alimony, Rev. Code, 1825, 329, and the language of the first section of the act on the same subject, Rev. Code 1833, 225, the substance of which is retained in this act.

When the officer is made co-defendant.

SEC. 3. If the officer returns the writ executed, and has not the defendant, according to the command thereof, or if he fail to take or return the bond, or if the bond returned is adjudged insufficient, at the return term of the court, and the defendant fails to perfect his bail; if ruled thereto, the officer shall be made a co-defendant; and may defend the suit upon the pleas of the defendant, and shall be subject to the same judgment; and be joined therein.

What course when bond is forfeited.

SEC. 4. When a bond, taken in pursuance of this act, is forfeited, the plaintiff shall have the same remedy against the bail, and the bail the same remedy against the principal; and the officer, when made a defendant, the same remedy against the principal and bail as may exist by law in cases of bail in other civil cases, and the same proceedings shall be had thereon.

Court may reduce bail.

SEC. 5. The court out of which any "capias in detinue" is issued, or any judge thereof in vacation, may reduce the sum for which the bail is demanded, and the court may accept the appearance of the defendant, and cancel the bond in such manner, for like causes, and with the like effect, as in cases of bail in other civil cases.

When the court may award inquiry, &c.

SEC. 6. If any action of detinue, the value of the property received, or the damages for the detention thereof, be omitted in any verdict for the plaintiff, the court may, at any time, award an inquiry to ascertain the same.

When plaintiff may be barred of title.

SEC. 7. If, on an issue concerning several things in one court in detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted.

This act to take effect and be in force from and after its passage.

CHAPTER 62.

DIVORCE AND ALIMONY.

An Act concerning divorce and alimony.

§ 1. Causes of divorce from the bonds of matrimony.
2. Any court of chancery invested with jurisdiction in such cases.
3. Pleading and mode of procedure in defence.
4. Residence of one year within the territory necessary, unless, &c.
5. When cause of divorce commences without the territory, but continues within the same, jurisdiction maintained.
§ 6. Alimony and maintenance; how provided for.
7. Collusion between the parties, or adultery in both, a bar to divorce.
8. Guilty forfeits matrimonial rights, and cannot marry again under five years.
9. Maintenance decreed in certain cases.
10. On a divorce decreed, property coming by the marriage reverts to the wife.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Causes of divorce.

Section 1. When a marriage hath been or shall be solemnized between two persons, and either party at the time of the contract was, and still is, impotent; or had a wife or husband living at the time of the marriage; or has committed adultery subsequently to the marriage; or wilfully deserts and absents himself or herself, without a reasonable cause, for the space of two years; or shall be convicted of felony or infamous crime, or addicted to habitual drunkenness for the space of two years, or shall be guilty of such cruel and barbarous treatment as to endanger the life of the other; or shall offer such indignities to the person (*a*) of the other as shall render his or her condition intolerable; or when the husband shall be guilty of such conduct as to constitute him a vagrant, within the meaning of the first section of an act respecting vagrants, the innocent and injured party may obtain a divorce from the bonds of matrimony; but no such divorce shall affect the legitimacy of the children. (*b*)

Any court of chancery invested with jurisdiction in such cases.

Sec. 2. Any court having chancery jurisdiction, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony, or maintenance; and the like process and proceedings shall be had in said causes as are had in other causes on the equity side of the court, except the answer of the defendant shall be accompanied by an affidavit annexed thereto, that the facts stated in the bill are true, according to the best knowledge and

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(*a*) Charges of infidelity, made by the husband, without any just cause, held to be "personal indignities," within the meaning of this clause. Lewis vs. Lewis, 5 Missouri Rep., 278.

(*b*) *Vide ante*, title Descents and Distributions, sec. 10, and Lincecum vs. Lincecum, 3 Missouri Rep., 441.

belief of the complainant, and that the complaint is not made out of levity or by collusion, fear or restraint, between the complainant and defendant for the mere purpose of being separated from each other, but in sincerity and truth, for the causes mentioned in said bill; the proceedings shall be had in the county where the complainant resides, and the process may be directed, in the first instance, into any other county in the territory, where the defendant resides.

Pleading and mode of procedure in defence.

SEC. 3. That in all suits hereafter brought, or which are now pending, for a divorce from the bonds of matrimony, it shall and may be lawful for the defendant, in his or her defence thereto, to set forth and charge, in his or her answer to the complainant's bill, any of the facts specified in the first section of this act, which, if proved, would entitle such defendant to a divorce from the bonds of matrimony; and said defendant may, in his or her said answer, pray the court, for the causes stated in said answer, that he or she be divorced from the bonds of matrimony entered into with said complainant, and said answer shall be sworn to as the original bill; and upon the hearing of the cause, if the court shall be satisfied that the defendant is the injured party, the court shall enter a decree divorcing the said defendant from the said complainant, as prayed in the answer.

Person not entitled to divorce, when.

SEC. 4. No person shall be entitled to a divorce from the bonds of matrimony who has not resided within the territory one whole year next before the filing of the bill, unless the offence or injury complained of was committed within this territory, or whilst one or both of the parties resided within this territory.

Where cause of divorce commences without the territory, &c.

SEC. 5. Where the cause of divorce has heretofore or shall hereafter commence beyond the limits of this territory, and has been, or shall be, continued or completed within the territory, the courts shall have the same jurisdiction as if the cause had commenced and been completed within this territory.

Alimony and maintenance provided for.

SEC. 6. When a divorce shall be decreed, the court shall make such order touching the alimony and maintenance of the wife, and the care, custody and maintenance of the children, or any of them, as from the circumstances of the parties and the nature of the case shall be reasonable; and when the wife is complainant, to order the defendant to give security for such alimony and maintenance, and, upon his neglect to give the security required of him, or upon default of himself and his securities, if any there be, to pay or provide such alimony and maintenance, to award an execution for the collection thereof, or, to enforce the performance of the decree, to order by sequestration of property, or by such other lawful ways and means as is according to the practice of said court. The court, on the application of either party, may make such alteration, from time to time, as to the allowance of alimony and maintenance, as may be proper, and may order any reasonable sum to be paid for the support of the wife during the pendency of her application for a divorce.

Collusion between the parties, or adultery by both, a bar to divorce.

SEC. 7. If it shall appear to the court that the adultery, or other injury or offence, complained of, shall have been occasioned by the collusion of the parties, or done with an intention to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, then no divorce shall be decreed.

Guilty party forfeits all rights; cannot marry again under five years, &c.

SEC. 8. In all cases of divorce from the bonds of matrimony, the guilty party shall forfeit all rights and claims under and by virtue of the marriage; nor shall the guilty party be allowed to marry again, by reason of such divorce, under five years after such divorce, unless otherwise expressed in the decree of the court; and in all cases, where the proceedings shall be *ex-parte*, the court shall, before it grants such divorce, require proof of the good conduct of the petitioner, and be satisfied that he or she is an innocent and injured party.

Maintenance decreed in certain cases.

SEC. 9. When the husband without good cause shall abandon his wife, and refuse or neglect to maintain and provide for her, the court shall decree such support and maintenance to be provided and paid by said husband, for the wife and her children, or any of them by that marriage, out of his property, and for such time as the nature of the case and the circumstances of the parties require, and to compel the defendant to give security for such maintenance; and, from time to time, to make such further orders touching the same as shall be just, and to enforce such decree in the manner prescribed in the fifth section of this act; and so long as said maintenance is continued, the husband shall not be charged with the wife's debts contracted after the decree of such maintenance.

On a divorce decreed, property by the marriage reverts to the wife.

SEC. 10. When the wife shall obtain a divorce from the bonds of matrimony, all property which came to the husband by means of the marriage, and remaining undisposed of at the time of filing the bill, shall revert to the wife and children.

This act to take effect and be in force from and after its passage.

CHAPTER 63.

DOWER.

An Act concerning dower.

§ 1. Dower in real estate.

2. Widow entitled to share in slaves and personal estate, absolutely; when. Subject to the payment of the husband's debts.

3. Dower, when the husband leaves no descendants, &c.

4. Dower, when the husband leaves none by his last wife.

5. Provisions for widow in two last sections, subject to payment of debts.

6. Election given to the widow; when.

7. How such election shall be made and evidenced.

8. Dower not barred by conveyance, judgment, &c., laches, &c., without consent of the wife.

9. Divorced woman, when entitled to dower; when not.

10. Devise of real estate; when a bar to dower.

11. Not to be endowed, unless, by writing, &c., she shall not accept the provisions made by will.

12. Jointure, when a bar to dower.

13. Widow, at her election, may renounce jointure; when.

14. When estate by jointure shall cease.

15. By what acts of the wife dower is forfeited.

16. Widow to remain in mansion house until dower is assigned.

17. Jurisdiction of probate court to make partition of slaves, &c.

18. Notice of application to be given; how.

19. Commissioners to make partition; how.

20. Court shall secure contingent rights, &c., in such assignment.

21. In what cases the widow is entitled to her action for dower.

22. May file a petition in the district or probate court. Proceedings thereon.

23. Several defendants, some not served with process, the demandant may proceed against those summoned. Who may be made a defendant.

24. Judgment by default, &c., proceedings thereon. Judgment, that the widow be seized of dower, &c. Proceedings thereon.

§ 25. Commissioners to ascertain dower; how.

26. County surveyor to make survey, &c.; when. Commissioners to report. If approved, to be recorded; if not, proceedings.

27. On approval of report, court shall empannel a jury to assess damages.

28. If land not susceptible of division, proceedings.

29. Judgment of allowance in lieu of dower.

30. What exceptions of defendant shall not abate the suit.

31. Proceedings by heir, legatee, &c., to procure admeasurement of dower. Notice to be given; when and how.

32. Court shall appoint commissioners, when. No judgment for damages. Costs; how paid.

33. Dower obtained by collusion with guardian of minor; how avoided.

34. Action against widow to admeasure dower; when and to whom allowed.

35. Petition to be filed in district or probate court; what it shall state. Summons to issue; how served. Proceedings.

36. Judgment in such action; how rendered.

37. Commissioners may be appointed; when.

38. How to proceed on the report of commissioners, &c.

39. Judgment obtained by collusion in such action brought by guardian, not to bind ward, &c.

40. Costs, how regulated.

41. Judgment for damages only against the estate; when.

42. Court shall award execution for annuity of widow; when.

43. Actions for dower not to abate.

44. Proceedings in case of the death of the dowress, *pendente lite*, &c.

45. Action against widow not to abate by death of the plaintiff.

46. Writs of error and appeals allowed.

47. Extent of recognizance of appellant. Proceedings on appeal, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Dower in real estate.

SECTION 1. Every widow (*a*) shall be endowed of the third part of all the lands whereof her husband, or any other person to his use, was seized of an estate of inheritance, at any time during the marriage, to which she shall not have relinquished her right of dower, in the manner prescribed by law, to hold and enjoy during her natural life. Dower in leasehold estate, for a term of twenty years or more, shall be granted and assigned as in real estate; for a less term than twenty years, shall be granted and assigned as in personal property.

Widow entitled absolutely to share in the slaves, when.

Subject to the payment of her husband's debts.

SEC. 2. When the husband shall die, leaving a child or children, or other descendants, the widow shall be entitled absolutely to a share in the slaves and other personal estate belonging to the husband at the time of his death, equal to the share of a child of such deceased husband; or, at her option, to one-third part of the slaves of such husband, during her natural life, and one-third part of the other personal estate, absolutely; in either case subject to the payment of her husband's debts.

Dower, when the husband leaves no descendants, &c.

SEC. 3. When the husband shall die without any child, or other descendants in being, capable of inheriting, his widow shall be entitled, *First,* to all the real and personal estate which came to the husband in right of the marriage remaining undisposed of, absolutely; *Second,* to one-half of the real and personal estate belonging to the husband at the time of his death, absolutely.

Dower, when husband leaves none by his last wife.

SEC. 4. When the husband shall die, leaving such child or descendants, but not by his last marriage, his widow may, in lieu of dower, elect to take, in addition to her real estate, the slaves and other personal property in possession of the husband that came to him in right of the wife by means of the marriage.

Subject to payment of debts.

SEC. 5. The provisions made for the widow, in the two last sections, shall be subject to the payment of the husband's debts.

Election given to the widow, when.

SEC. 6. When the husband shall die without a child, or other descendant living, capable of inheriting, the widow shall have her election to take her dower, as provided in the first section, discharged of debts, or the provisions of the third section, subject to debts. (*b*)

How such election shall be made and evidenced.

SEC. 7. Such election shall be made by declaration in writing, acknowledged before some officer authorized to take the acknowledgment of deeds, and filed in the office of the clerk of the court

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(*a*) The widows of alien residents, who die in this state, held entitled to dower. Stokes vs. O'Fallon, 2 Missouri Rep., 32.

(*b*) The cases of Stokes vs. O'Fallon, 2 Missouri Rep., 32; Griffith vs. Walker, *ib.* 9, 113, and Davis vs. Davis, 5 *ib.*, 183, are referred to as explanatory of the history and intent of the law of dower, as it now stands in this and the five preceding sections.

in which letters testamentary or of administration shall have been granted, within six months after the grant of the same, otherwise she shall be endowed under the provisions of the first section of this act.

Dower not barred by conveyance, judgments, laches, &c., without consent of wife.

Sec. 8. No act, deed or conveyance, executed or performed by the husband, without the assent of the wife, evidenced by her acknowledgment thereof in the manner required by law to pass the estate of married women, and no judgment or decree confessed by or recovered against him, and no laches default, covin or crime of the husband, shall prejudice the right and interest of the wife provided in the foregoing sections of this act.

Divorced woman, when entitled to dower, when not.

Sec. 9. If any woman be divorced from her husband for the fault or misconduct of such husband, she shall not thereby lose her dower; but if the husband be divorced from the wife for her fault or misconduct, she shall not be endowed.

Devise of real estate, when a bar to dower.

Sec. 10. If any testator shall, by will, pass any real estate to his wife, such devise shall be in lieu of dower, out of the real estate of her husband whereof he died seized, unless the testator, by his will, otherwise declared.

Not to be endowed unless by writing, &c., she shall not accept the provisions made by will.

Sec. 11. In such case, the wife shall not be endowed in any of the real estate whereof her husband died seized, unless she shall, by writing, duly executed and acknowledged as in case of deeds for land, and filed in the office of the court in which the will is proven and recorded, within twelve months after the proof of the will, not accept the provisions made for her by said will.

Jointure, when a bar to dower.

Sec. 12. If any woman, prior to and in contemplation of marriage, shall, on agreement or marriage contract with her intended husband, or other person, receive any estate, either real or personal, to take effect after the death of her husband, by way of jointure, as a provision for her support during life, and expressed to be in full discharge of all her claim of dower, such estate shall be valid, and a bar to dower in the estate of her husband. When any lands have been, or hereafter shall be, conveyed to the husband and wife, or to any other person and their heirs, and to the use of the husband and wife, or to the use of the wife, for the jointure of the wife, every such married woman having such jointure made shall not claim any dower in the residue of the lands of which her husband was at any time seized.

Widow, at her election, may renounce jointure, when.

Sec. 13. If any deed of conveyance, assurance, agreement or contract, for jointure, be made after marriage, or be made before marriage and during the infancy of the wife, in either case the widow may, at her election, renounce her jointure, and have dower. In all cases, if the title to the estate settled on the wife, as her jointure, shall fail, or she be evicted from or cannot recover such estate, she shall have dower in the estate of her husband; or, if the title fail as to part only, the deficiency shall be made up of her husband's estate.

When estate by jointure shall cease.

Sec. 14. When any deed, conveyance, assurance, agreement, or contract for jointure, in lieu of dower, shall, through any default, fail to be a legal bar to dower, and the widow, availing herself of such default, shall demand her dower, then the estate and interest so conveyed to such widow shall cease and determine.

By what acts of the wife dower is forfeited.

Sec. 15. If a wife voluntarily leave her husband, and go away and continue with an adulterer, or after being ravished consent to the ravisher, she shall be forever barred from having her jointure or dower, unless her husband be voluntarily reconciled to her, and suffer her to dwell with him.

Widow to remain in mansion house till dower be assigned.

Sec. 16. Until dower be assigned, the widow may remain in and enjoy the mansion house of her husband, and the messuages or plantation thereto belonging, without being liable to pay any rent for the same. (c)

Jurisdiction of probate court to make partition of slaves, &c.

Sec. 17. The probate court shall have full power to make partition of slaves among heirs or legatees, and to assign to any widow her share in the slaves of her husband, according to the provisions of the sixth article of the act concerning executors and administrators, and for that purpose they shall appoint three commissioners to make such partition and assignment of dower in slaves, and make report to said court for confirmation or rejection.

Notice of application to be given, how.

Sec. 18. Ten days' notice shall be given of every application for such partition and assignment, to the executor or administrator, and to all the heirs and legatees interested therein, or their guardians or agents; and if any of them be non-residents of this territory, such notice shall be by eight weeks' publication in some newspaper.

Commissioners to make partition, how.

Sec. 19. It shall be the duty of the commissioners to make partition as equal in kind as the value and number of the slaves will admit, and report the value of each lot to the probate clerk at the next term thereof; and if the court discovers that the lots are of unequal value, they shall cause them to be made equal, by adding to each lot of inferior value sufficient money, arising from the sale of other personal property or from the hire of slaves, to make it equal in value to the others.

Court to secure contingent rights, &c. in such assignment.

Sec. 20. In making such assignment, the court may take the necessary steps to secure the contingent rights of creditors, and the reversionary rights and rights in remainder of the heirs or legatees in such slaves.

(c) In Stokes vs. McAlister, 2 Missouri Rep., 163, it was held that that this right might be assigned to another, and that possession might be recovered by ejectment.

In what cases the widow is entitled to her action for dower.

Sec. 21. When any widow shall be entitled to dower in real estate, and she be deforced thereof, or cannot have it without suit, or if her dower be unfairly assigned or not assigned within twelve months after the death of her husband, she may sue for and recover the same, with damages; that is to say, the value of the whole dower to her belonging, from the time of her husband's death (if he died or shall die seized); or from the time of demanding dower, (if the husband was or shall be seized, but did not or shall not die seized,) unto the day that she shall recover her dower. (*d*)

May file a petition in the district or probate court.

Sec. 22. Any widow may file a petition in the office of the clerk of the district or probate court of the county wherein the real estate, in which she claims her dower, is situate, or, if the land is divided by a county line, then in either county, against any person claiming an interest in such lands, or being in possession thereof, or who shall deforce her of her dower therein and the clerk shall thereupon issue a summons, endorsed or annexed to such petition, which shall be served as process in actions at law; and if the defendant appear and plead, the cause shall proceed according to the course of proceedings at law. If any defendant shall not be summoned, or shall not appear, the court shall award an order of publication, which shall notify such defendant, that unless he appear on the first day of the next succeeding term, and proceed to trial, judgment will be rendered against him by default; which order shall be published in some newspaper printed in this territory for two months before the term at which he shall be notified to appear, and, when so published, shall be equivalent to the service of a summons.

Proceedings thereon.

Several defendants, some not served with process, demandant may proceed against those summoned.

Sec. 23. Where there are several defendants, some of whom are summoned to appear, and others do not, the demandant may proceed against those summoned or appearing without regard to the others, or may continue the cause, and take out *alias* writs, or make publication as aforesaid, to bring in the other parties. Any person claiming title to the land whereof dower is claimed, may be made a defendant if he appear and apply for the purpose, and proceedings shall be had thereon, in all respects, as if he were originally a party duly summoned.

Person claiming title may be made a defendant.

Judgment by default, &c., proceedings thereon.

Sec. 24. If judgment be rendered by default, *nil dicit non sum informatus*, the court shall hear the proofs and allegations of the demandant, or empannel a jury for that purpose; and if it be

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(*d*) The mode of proceeding, when the widow and children of an intestate desire partition and assignment of dower, will be found under the head "Partition."

Judgment that the widow be seized of dower, &c., when rendered.

Proceedings thereon.

found upon such proceedings, or on the trial of the issues, that the demandant is entitled to dower, the court or jury shall determine in what proportion, and the court shall thereupon render judgment that she be seized of her dower, accordingly, for and during her natural life, and that she recover the damages that may be assessed; and thereupon shall appoint three competent persons as commissioners to assign and admeasure such dower, who, before they enter upon the discharge of their duties, shall take an oath or affirmation honestly and impartially to execute the trust reposed in them respectively.

Commissioners to ascertain dower, how.

Sec. 25. The commissioners, or a majority of them, shall proceed to the land, or other real estate, and by actual admeasurement ascertain and set off the widow's dower therein, according to the judgment of the court.

County surveyor to make survey, &c., when.

Commissioners to report.

If approved, to be recorded; if not, proceedings.

Sec. 26. The county surveyor of the county, if thereto required by the commissioners, shall make such survey and plats as the commissioners shall direct, and the commissioners shall make full report of their proceedings, with a plat and boundaries of the land so assigned by them as dower, to the court appointing them, at the next term thereof, which report, if approved, shall be recorded among the records of the court; but if it shall not be approved, the commissioners shall again proceed as before directed, and as often as may be necessary, until their report shall be approved; and such court may, at any time, discharge any commissioner, and appoint others in their stead, and may supply any vacancy which may happen by death, resignation, or refusal to act of any of the commissioners.

On approval of report, court shall empannel jury to assess damages, &c.

Sec. 27. When any report assigning dower shall be approved, the court shall empannel a jury to assess the damages, and shall render judgment for the damages assessed, if the same have not before been done, and award a writ of possession, according to the report of the commissioners, and execution for the damages.

If land not susceptible of division, proceedings.

Sec. 28. If the commissioners shall report that the lands or other estate is not susceptible of a division without great injury thereto, a jury shall be empannelled to inquire of the yearly value of the widow's dower therein, and shall assess the same accordingly.

Judgment of allowance in lieu of dower.

Sec. 29. The court shall thereupon render judgment, that there be paid to such widow as an allowance in lieu of dower, on a day therein named, the sum so assessed, as the yearly value of her dower, and the like sum on the same day every year thereafter, during her natural life; and such jury shall, moreover, (if the same have not been before done,) assess the damages which may have accrued, down to the time of rendering their verdict.

SEC. 30. No writ of summons in dower shall abate by the exception of the tenant or defendant, that the demandant hath received her dower of another before her writ was sued out, unless he can show that the dower so received was in satisfaction of her dower in the lands whereof she demands dower.

What exceptions of defendants shall not abate the writ.

SEC. 31. When any widow shall be entitled to dower in lands, or other real estate, whereof her husband died seized, it shall be lawful for any heir or legatee, or the guardians of such as are minors, entitled to any interest in such lands or real estate, or the executors or administrators of the intestate, or any creditor of the widow, and, after her marriage, any creditor of her husband, or any other person having any interest in such lands or such real estate, to apply, by petition, to the district or probate court of the county wherein the lands lie, to assign and admeasure such dower, giving twenty days' notice in writing of such intended application to such widow, by personal service, or by leaving a copy at her usual place of abode.

Proceedings by heir, legatee, &c., to procure admeasurement of dower.

Notice to be given, when and how.

SEC. 32. Upon such application, and due proof of the service of such notice, the court shall appoint three commissioners to assign and admeasure such dower, who shall take the same oath, and perform the like duties, and the court shall proceed in like manner therein, as hereinbefore provided in like cases where the widow demands dower. In proceedings under this section, there shall be no judgment for damages, and the costs and charges shall be divided and apportioned among the persons concerned, according to their respective interests in the lands and real estate out of which dower shall be assigned.

Court shall appoint commissioners, when.

No judgment for damages.

Costs how paid.

SEC. 33. When a widow, having no right to demand dower, sues out a writ of dower against the guardian of any minor, and the guardian endows the widow by favor, or makes default, or by collusion defends the plea faintly, whereby she is awarded her dower to the prejudice of such minor, such minor, when he shall arrive at full age, shall have an action to demand seizin, or to admeasure such dower according to law.

Dower obtained by collusion with guardian of minor, how avoided.

SEC. 34. Every person who shall not have been made a party to any action, and duly notified or summoned to appear, and shall not have appeared to any action brought by any widow for her dower, (except such as claim under any of the parties who have appeared, or were summoned or notified, by title derived after the commencement of such action,) shall have their action against such widow to admeasure the dower, and all other persons shall be concluded by the proceedings under the provisions of this act.

Action against the widow to admeasure dower, when and to whom allowed.

SEC. 35. When any person, not concluded as aforesaid, shall

Petition to be filed in district or probate court, what it shall state.

file his petition in the office of the clerk of the district or probate court of the county in which the lands or other real estate in which dower has been assigned, under the provisions of this act, are situate, stating that such widow was not entitled to dower in such lands or other real estate, or that her dower was unduly assigned, and claiming title to the lands so assigned, or a part thereof, the clerk shall issue a summons thereon, in the nature of a writ of admeasurement of dower, which shall be served on such widow as the like process in other cases at law; and such widow may appear and deny the title of the demandant, and put him upon the proof thereof, and may show her right of dower, and that it was properly and duly assigned, according to law, and may plead as many pleas as she may think proper, and have every defence which may be allowed by law in like cases, and proceedings shall be had as in ordinary cases at law.

Clerk to issue a summons thereon, how served.

Proceedings.

Judgment in such action, how rendered.

SEC. 36. If it be found that the demandant hath not good title to the premises, or that she is entitled to dower, and the same has been assigned according to her rights, she shall have judgment to retain her dower and to go quit of the said action; but if it shall be found that the demandant hath good title, and that such widow is not entitled to dower, he shall have judgment of seizin.

Commissioners may be appointed, when.

SEC. 37. If, upon proof of title in the demandant, it appear that the widow is entitled to dower, but that the same has not been duly assigned, the court shall appoint commissioners as in case of petition of the widow, who shall take an oath and proceed in like manner as hereinbefore provided in the assignment of dower.

How to proceed on the report of commissioners, &c.

SEC. 38. The court shall proceed upon their report in the same manner, and shall have the same power to supply vacancies, and discharge commissioners and appoint others, as is provided in case of commissioners appointed to assign dower, and, when the report is approved, shall award a writ of possession accordingly; and all parties to any such action, and those claiming under them, shall be concluded thereby.

Judgment obtained by collusion, in such action brought by guardian, not to bind ward, &c.

SEC. 39. When such action is brought by any guardian, his ward, when he becomes of age, shall not be bound thereby if the judgment be obtained by collusion, but may have his action within three years after he comes of age, and in like manner the widow shall be aided if she be impleaded and lose her dower by default; but she shall recover her dower, if she hath right thereto, as if no proceeding had ever been had.

Costs, how regulated.

SEC. 40. The charge of the commissioners for their services, not exceeding one dollar per day each, shall be taxed as other costs, and when judgment shall be for the demandant, he or she shall have judgment to recover his or her costs; and when the judgment shall be for the defendant, he shall recover his costs.

Judgment for damages only against the estate, when.

SEC. 41. In all cases of judgment for damages, in favor of any widow, under the provisions of this act, execution thereof shall be awarded only against the estate in which dower shall be assigned.

Court shall award execution for annuity of widow, when.

SEC. 42. When a writ of possession shall not have been awarded by reason that a division of the estate cannot be had, and a yearly allowance shall have been adjudged in lieu thereof, the court, when any such yearly allowance shall become due and be unpaid, shall award execution therefor in favor of such widow, or, if she die before the end of any year, then in favor of her executors or administrators, for all arrearages, and a just proportion of the last year's allowance, computing the time which had elapsed at the time of her death.

Actions for dower not to abate.

SEC. 43. No action brought by any widow for the recovery of her dower shall abate by the death of either party; but if the demandant die, her husband, if she be married, or if not, her executors or administrators, may appear and prosecute the action; but no admeasurement of dower or writ of possession shall, in such case be awarded, but he or they shall have judgment and execution only for the damages occasioned by the deforcement.

Proceedings in case of the death of dowess, *pendente lite*, &c.

SEC. 44. If she die before action brought, her executors and administrators may maintain an action, in which no admeasurement shall be made, or writ of possession awarded; but upon the issue found, the court or jury shall assess the damages according to this act; and where one or more of the defendants die, the action shall proceed against the survivors; and if all the defendants die, the action may be renewed against the executors and administrators as in other cases; but any other person, claiming title to the land, may be made a party, by his voluntarily appearing to such action as a defendant.

Actions against widow not to abate by death of plaintiff.

SEC. 45. No action against any widow for admeasurement of dower shall abate by the death of the plaintiff or demandant, but his heir, legatee, and the guardians of such as are minors, may appear and prosecute such action.

Writs of error and appeals allowed.

SEC. 46. If either party shall feel aggrieved by the final judgment of the court, he may have an appeal, or prosecute a writ of error, in the same manner as in other actions at law; but no appeal or writ of error shall operate as a *supersedeas*, unless the appellant or plaintiff in error shall enter into recognizance as required by law.

Extent of recognizance of appellant.

SEC. 47. When the judgment shall be that the widow be

Proceedings on appeal, &c.

seized of her dower, the appellant shall become bound in such recognizance to pay, not only all damages which have been adjudged, but all which may be adjudged to such widow in the action thereafter; and when any such judgment shall be affirmed, there shall be a writ to inquire of the *mesne* profits and damages by waste done after the first judgment.

This act to take effect and be in force from and after its passage.

CHAPTER 64.

DRAM SHOPS.

An Act to restrain dram shops and taverns, and to regulate the sale of intoxicating liquors.

§ 1. Special election to be held.
2. Polls shall be opened "For" and "Against."
3. Who are entitled to vote.
4. Duty of county tribunal.
5. When declared against, no license to issue.
§ 6. Petition of majority before license issues.
7. Duty of city authorities.
8. Tax levied on license.
9. Penalty for selling without license.
10. Penalty for selling to slaves, &c.
11. Penalty for selling on Sunday.
12. Bond to be executed; conditions.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Special election to be held.

SECTION 1. A special election is hereby ordered to be held on the first Monday of October, in the year of 1855, and on the first Monday of October every two years thereafter, in each municipal township in every county in the territory, and in each incorporated city or town in the territory, to take the vote of the people upon the question whether dram shops and tavern licenses shall be issued in the said township, incorporated city or town, for the next two years thereafter.

Polls to be opened "For" and "Against."

SEC. 2. At said election polls shall be opened at the usual place of voting in each township, incorporated city, or town, which shall be headed as follows, respectively: "In favor of dram shop," "Against dram shop;" and if the voting shall be by ballot, ballots shall be inscribed as above, respectively.

Who are entitled to vote.

SEC. 3. At such election all the qualified voters of the township, or of any incorporated city or town, shall be allowed to vote in such township, or incorporated city or town, and not elsewhere.

SEC. 4. Upon such election being held, the tribunal transacting county business for the several counties in the territory shall examine, ascertain and adjudge in what township, incorporated city, or town, a majority of all the qualified voters of said township, incorporated city, or town, have voted affirmatively in favor of dram shops in said township, incorporated city, or town; and thereupon, the tribunal transacting county business in the respective counties in the territory may, during the next ensuing two years, grant license to dram shops, tavern keepers and grocers, to such persons and under such restrictions as are hereinafter designated and provided.

Duty of the county tribunal.

SEC. 5. For and during the two years next ensuing the said election, no dram shop or tavern license shall be granted to any person within any township, incorporated city, or town, unless a majority of the votes polled at said election shall declare in favor of granting said license.

When declared, no license to issue.

SEC. 6. Before a dram shop license, tavern license, or grocer's license shall be granted to any person applying for the same, such person shall present to the tribunal transacting county business a petition or recommendation signed by a majority of the householders of the township; if in the county in which such dram shop, tavern or grocery is to be kept, or if the same is to be kept in an incorporated city or town, a petition signed by a majority of the householders of the block or square in which said dram shop or tavern or grocery is to be kept, recommending such person as a fit person to keep the same, and requesting that a license be granted to him for such purpose.

Petition of majority before license issues.

SEC. 7. The city authorities of any incorporated town in this territory, authorized by its charter to grant dram shop or tavern license or grocers' license, shall only grant such license to persons who have previously secured a similar license from the tribunal transacting county business for the county in which said city or town is situated.

Duty of city authorities.

SEC. 8. Upon every license granted to a dram shop keeper, and upon any license granted to a tavern keeper or grocer, there shall be levied a tax of not less than ten dollars nor more than five hundred dollars, for county purposes, for every period of twelve months, the amount of tax to be determined by the tribunal granting the license.

Tax levied on license.

SEC. 9. If any person who, without taking out and having a license as grocer, dram shop keeper or tavern keeper, shall, directly or indirectly, sell any spirituous, vinous, or fermented or other intoxicating liquors, shall be fined in any sum not less than one hundred dollars for each offence; and any person convicted

Penalty for selling without license.

of violating this provision shall, for every second or subsequent offence, be fined in a sum not less than the above named, and shall, in addition thereto, be imprisoned in the county jail not less than five nor more than thirty days.

Penalty for selling to slaves, &c.

Sec. 10. Any person, having license as aforesaid, who shall sell any intoxicating liquor to any slave without the consent of the master, owner or overseer of such slave, shall be deemed guilty of a misdemeanor, and shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and imprisonment in the county jail not less than ten nor more than thirty days, and shall, upon conviction, forfeit his license; and no license as grocer, dram shop keeper or tavern keeper shall again be granted to said person during the two years ensuing the said conviction.

Penalty for selling on the first day of the week.

Sec. 11. Any person who shall keep open any ale, beer or porter house, grocery, dram shop or tippling house, or shall sell or retail any fermented, distilled or other intoxicating liquors, on the first day of the week, commonly called Sunday, shall, on conviction thereof, be adjudged guilty of misdemeanor, and fined in a sum not less than one hundred dollars nor more than five hundred dollars, and shall be imprisoned in the county jail not less than ten days nor more than thirty days; if such person is licensed as grocer, dram shop keeper, or tavern keeper, he shall, in addition to the above provisions, forfeit said license, and shall not again be allowed to obtain a license under the law for a period of two years next after conviction.

Bond to be executed before license issues.

Sec. 12. Before any person shall be licensed as a dram shop keeper or grocer, or tavern keeper, under the provisions of this act, he shall execute to the tribunal transacting county business, in favor of the county where he appeals for a license, a bond in the sum of two thousand dollars, with at least two securities, to be approved by the court, conditioned that he will not keep a disorderly house; that he will not sell, or permit to be sold, any intoxicating liquors to any slave without the consent of the master, owner or overseer of such slave; that he will not keep his dram shop, tavern or grocery open on Sundays; nor will he sell, or allow to be sold, thereat, on Sunday, directly or indirectly, any intoxicating liquor: and upon said person being convicted of any of the offences enumerated therein, suit may be brought against said principal and securities, to recover the amount of the fine or fines adjudged against him on said conviction, in any court of competent jurisdiction.

Conditions.

This act to take effect and be in force from and after its passage.

CHAPTER 65.

EJECTMENT.

An Act regulating the action of ejectment.

§ 1. The action may be maintained when plaintiff is legally entitled to possession.
2. In what other cases this action may be maintained.
3. Tenants in common may join in the action.
4. To be prosecuted in the real names of the parties.
5. Who may be made a co-defendant.
6. What shall be averred in the declaration.
7. What defendant may plead; proceedings.
8. Plea of the general issue.
9. What such plea shall put in issue.
10. What plaintiff must show to entitle him to recover.
11. When actual ouster must be shown if plaintiff is a joint tenant or tenant in common.
12. If plaintiff prevail, he shall recover damages, rents, and profits.
13. Judgment shall be entered for costs and damages only, when.
14. Value of monthly rents and profits shall be found, when.
15. And judgment rendered accordingly.

§ 16. Judgment for possession, &c., writ to issue; proceedings.
17. Judgment for damages and costs only how collected.
18. In cases of appeal, &c., defendant shall give bond.
19. On judgment of dispossession, compensation for improvements, &c., when and how made.
20. What facts complainant shall set forth in his bill to recover value of improvements.
21. An injunction may be granted.
22. Plaintiff at law may file a cross-bill.
23. If the value of the improvements exceed the value of the land, decree of the court, &c.
24. Conveyance to be made to occupying claimants, when.
25. If the value of the land exceed the value of the improvements, what the court may decree.
26. Partition shall not be decreed, when.
27. No improvements, after notice, to be paid for.
28. Person other than proprietor, of better title, paying for improvements, &c., his remedy.
29. Actions of trespass may be maintained.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When the action may be maintained.

Section 1. The action of ejectment may be maintained in all cases when the plaintiff is legally entitled to the possession of the premises. (*a*)

In what other cases this action may be maintained.

Sec. 2. The action of ejectment may also be maintained in all cases where the plaintiff claims the possession of the premises, against any person not having a better title thereto, under or by virtue of, *First*, an entry with the register and receiver of any land office of the United States, or with the commissioner of the general land office thereof; or, *Second*, a pre-emption right under the laws of the United States.

Tenants in common may join in the action.

Sec. 3. Two or more tenants in common may join in an

(*a*) Ejectment is the appropriate remedy to regain possession by a widow who is evicted, the action for damages given by the act concerning dower being cumulative; Stokes vs. McAllister, 2 Missouri Rep., 132. An executor or administrator, as such, cannot maintain an action of ejectment for lands of which his testator or intestate died seized. Burdyne vs. Mackey's executor, 7 Missouri Rep., 374.

action of ejectment, and jointly prosecute and sustain such action for the recovery of the estate by them owned in common.

To be prosecuted in the real names of the parties.

Sec. 4. The action shall be prosecuted in the real names of the parties thereto, and shall be brought against the person in possession of the premises claimed.

Who may be made a co-defendant.

Sec. 5. The person from or through whom the defendant claims title to the premises, may, on motion, be made a co-defendant.

What shall be averred in the declaration.

Sec. 6. It shall be sufficient for the plaintiff to aver, in the declaration, that on some day, therein to be specified, he was entitled to the possession of the premises, describing them; and being so entitled to the possession thereof, that the defendant afterwards, on some day to be stated, entered into such premises, and unlawfully withholds from the plaintiff the possession thereof, to his damage, any sum he may claim. (*c*)

What defendant shall plead; proceedings.

Sec. 7. The defendant may plead the general issue, or he may plead his defence specially, and all pleadings and proceedings in the action shall be conducted as in personal actions, except where it is herein otherwise prescribed.

Plea of general issue.

Sec. 8. The general issue shall be, that the defendant is not guilty of unlawfully withholding the premises from the plaintiff, as alleged against him.

What such plea shall put in issue.

Sec. 9. Such plea shall put in issue every matter required to be established by the plaintiff on the trial, to entitle him to recover, and the defendant may, thereunder, give in evidence any matter in bar of the action. (*d*)

(*c*) A declaration, alleging that the plaintiff is legally entitled to the premises, is bad after verdict; Jameson vs. Smith et. al., 4 Missouri Rep., 202. In a declaration in ejectment, the description of the premises contended for must be such as to enable the jury to identify them with the description contained in the deeds upon which the plaintiff founds his claim; Newman vs. Lawless, 6 Missouri Rep., 280.

(*d*) In an action of ejectment by A. vs. B., a patent certificate to A's legal representatives, without other evidence, is no proof of title in A.; Matingley vs. Hayden, 1 Missouri Rep., 439; The plaintiff in ejectment may enter a *remittiter*, when the finding is for too much, to avoid a new trial; McAllister vs. Mullanphy, 3 Missouri Rep., 38. A certificate of the right of pre-emption is *prima facie* evidence of title against a New Madrid certificate and survey; Rector vs. Welsh, 1 Missouri Rep., 334. The rule of the common law, that the defendant in an action of ejectment may show an outstanding title in a third person to defeat the plaintiff, is not changed by our statute regulating the action of ejectment; Gurno vs. Janis' administrator, 6 Missouri Rep., 330.

A bill of particulars, in an action of ejectment, is filed, in which the plaintiff claims 300 arpents; he afterwards offers in evidence a deed for 400 arpents—held, that the deed is admissible in evidence; Brown vs. Cleveland, 5 Missouri Rep., 65. When a debtor's land is sold under execution, and an action of ejectment is afterwards brought against him to recover the land, he cannot set up an outstanding title in a third person; Laughlin vs. Stone, *ibid*, 43. A variance between the judgment and execution does not avoid a sheriff's deed; Montgomery vs. Farly & Robinson, *ibid*, 233. Under what circumstances the existence of a deed may be presumed; Newman vs. Studley, *ibid*, 291; McNair vs. Hunt, *ibid*, 300. A certified copy of a confirmation, made under the act of congress of 2d August, 1813, by the recorder of land titles, but which was not complete until confirmed by act of congress, is ad-

SEC. 10. To entitle the plaintiff to recover, it shall be sufficient for him to show that, at the time of the commencement of the action, the defendant was in possession of the premises claimed, and that the plaintiff had such right to the possession thereof as is declared by this act to be sufficient to maintain the action.

What plaintiff must show to entitle him to recover.

SEC. 11. If the action is brought by a joint tenant, or tenant in common, against his co-tenant, the plaintiff shall also be required to show, on the trial, that the defendant actually ousted him, or did some act amounting to a total denial of his right as such co-tenant.

Actual ouster, if plaintiff is joint tenant or tenant in common.

SEC. 12. If the plaintiff prevail in the action, he shall recover damages for all waste and injury, and, by way of damages, the rents and profits, down to the time of assessing the same, or to the time of the expiration of the plaintiff's title, under the following limitations: *First*, when it shall not be shown on the trial that the defendant had knowledge of the plaintiff's claim prior to the commencement of the action, such recovery shall be only from the time of the commencement of the action; *Second*, when it shall be shown on the trial that the defendant had knowledge of the plaintiff's claim prior to the commencement of the action, and that such knowledge came to the defendant within five years next preceding the commencement of the action, such recovery shall be from the time that such knowledge came to the defendant; *Third*, when it shall be shown on the trial that knowledge of the plaintiff's claim came to the defendant more than five years prior to the commencement of the action, such recovery shall only be for the term of five years next preceding the commencement of the action.

If plaintiff prevail, he shall recover damages, rents and profits.

SEC. 13. If the right of the plaintiff to the possession of the premises expire after the commencement of the suit, and before the trial, the verdict shall be returned according to the fact, and judgment shall be entered only for the damages and costs.

Judgment shall be entered for costs and damages only, when.

SEC. 14. If the plaintiff prevail in an action of ejectment, and it appears in evidence that the right of the plaintiff to the possession is unexpired, the jury shall find the monthly value of the rents and profits.

Value of monthly rents and profits shall be found, when.

SEC. 15. In such case, the judgment shall be for the recovery of the premises, the damages assessed, and the accruing rents and profits, at the date found by the jury, from the time of

And judgment rendered accordingly.

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missible evidence. This case is distinguishable from Ashley vs. Cramer, 7 Missouri Rep., 98; George vs. Murphy, 1 Missouri Rep., 777. An instrument of writing, executed by the sheriff, purporting to convey a defendant's land sold under execution, and which is not sealed, will not support an action of ejectment; Walker vs. Keile, 3 Missouri Rep., 301; Evans vs. Ashley, *ibid*, 177.

rendering the verdict until the possession of the premises is delivered to the plaintiff.

Judgment for possession, &c., writ to issue; damages, &c., how collected.

Sec. 16. When the judgment for the plaintiff is both for the recovery of the possession and of damages, the plaintiff may have a writ of possession, which shall command the officer to whom directed to deliver to the plaintiff possession of the premises, and shall also command him to levy and collect the damages and costs as in execution on judgments in personal actions.

Judgment for damages, &c., only, how collected

Sec. 17. When the judgment for the plaintiff is only for damages and costs, execution may be had thereon as on judgments in personal actions.

In cases of appeal, &c., defendant shall give bond.

Sec. 18. No appeal shall be allowed, nor *supersedeas* granted, on a writ of error in favor of the defendant in ejectment, unless the recognizance be in a sum, and with security sufficient, to secure the payment of all damages and accruing rents and profits, and with condition to stay waste, in addition to the conditions now required by law in such cases.

On judgment of dispossession, compensation for improvements, &c., when and how recovered.

Sec. 19. If judgment of dispossession shall be given in an action of ejectment, or in any real action, in favor of a person having a better title thereto, against a person in the possession of any land by virtue of any grant, warrant, concession, settlement, right or survey, confirmed under the authority of the laws of the United States, such person may recover, in a court of equity, compensation for all valuable and lasting improvements made by such person, in good faith, on the land under such title.

What facts complainant shall set forth in his bill to recover value of improvements.

Sec. 20. The complainant, in his bill, shall set forth the nature of his title, the length of his possession, and the kind and value of the improvements made; and shall also aver therein that he entered into the possession of the land, believing that he had good title thereto, and that he made the improvements, specified in the bill, in good faith, under the belief that he had good title to the land, and shall be verified by the affidavit of the complainant thereto annexed.

An injunction may be granted, &c.

Sec. 21. An injunction may be granted to stay the plaintiff at law from taking possession of the land until the value of the improvements is ascertained, or until the further order of the court.

Plaintiff at law may file a cross-bill.

Sec. 22. The plaintiff at law may file a cross-bill, praying for leave to relinquish the land to the occupying claimant, and to recover the value thereof aside from the improvements.

If the value of the improvements exceed the value of the land, decree of the court, &c.

Sec. 23. If the value of the improvements exceed the value of the land aside from the improvements, the court may decree that the occupying claimant shall, by a time to be specified in the decree, take the land, and pay the ascertained value thereof to the plaintiff at law; and in default of such payment, the plaintiff shall take possession of the land, discharged from all claim of such occupying claimant.

Conveyance to be made to occupying claimant, when.

SEC. 24. In all cases where the occupying claimant shall be decreed to take the land and pay the value thereof, the plaintiff at law shall, on payment of the money, make to the occupying claimant a conveyance thereof, with general warranty.

If the value of the land exceed the value of the improvements, what the court may decree.

SEC. 25. If the value of the land, aside from the improvements, exceed the value of the improvements, the court may, in its discretion, decree either that the plaintiff shall pay for the improvements before he shall be allowed to take possession of the land, or that the land shall be divided between the occupying claimant and the plaintiff, according to their respective rights in equity.

Partition shall not be decreed, when.

SEC. 26. No partition shall be decreed if the plaintiff at law insists upon his right to retain the land.

No improvements after notice to be paid for.

SEC. 27. If the plaintiff at law shall give the occupying claimant notice, in writing, of his claim, and of the nature thereof, such notice shall bar the occupying claimant, and all persons claiming from or through him, of compensation for improvements made after such notice.

Person other than proprietor, of better title, paying for improvements, &c., his remedy.

SEC. 28. No occupying claimant shall recover compensation twice for his improvements; and in all cases where the occupying claimant shall be paid for his improvements by any person other than the proprietor of the better title, such person shall be invested with the same rights, and have the same remedy for the recovery thereof, as is given by this act to such occupying claimant.

Actions of trespass may be maintained, when.

SEC. 29. An action of trespass may be maintained in all the cases enumerated in the second section of this act.

This act to take effect and be in force from and after its passage.

CHAPTER 66.

ELECTIONS.

An Act to regulate elections.

§ 1. Elections to be held.
2. General election.
3. Election for council.
4. Elections where held; proviso.
5. Judges to be appointed.
6. Clerk to make out poll books.
§ 7. Clerks to be appointed.
8. Vacancy to be filled.
9. Polls open, hours; proviso.
10. Duty of sheriff.
11. Qualified voters; proviso.
12. Eligibility as delegates, &c.

§ 13. Duty of sheriff.
14. Duty of judges of election.
15. Duty of secretary.
16. Duty of secretary.
17. List of members.
18. When governor to issue proclamation.
19. Presumed to be a voter.
20. When vote is challenged.
21. Free from arrest.
22. To preserve order, &c.
23. Penalty for no return.
24. Penalty for failure of judges.
§ 25. Contested elections; course to pursue.
26. Notice to be given; proviso.
27. When other justice selected.
28. Time notice to be served.
29. Of probate judge.
30. Of notice.
31. Of sheriff, &c.
32. Depositions.
33. Court to determine.
34. Who guilty of perjury.
35. Of counties attached.
36. Vote, by ballot.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Election to be held.

SECTION 1. On the first Monday in October, in the year one thousand eight hundred and fifty-five, and on the first Monday in October every two years thereafter, an election for delegate to the house of representatives of the United States shall be held, at the respective places of holding elections, in the territory of Kansas.

General election.

SEC. 2. On the first Monday in October, in the year one thousand eight hundred and fifty-six, and on the first Monday in October in every year thereafter, an election for representatives in the legislative assembly, and for all other elective offices not otherwise provided for by law, shall be held, at the respective places of holding elections, in this territory.

Election for council.

SEC. 3. On the first Monday in October, in the year one thousand eight hundred and fifty-seven, and on the first Monday in October every two years thereafter, an election shall be held, at the respective places of holding elections, for members of the council.

Elections, when held.

SEC. 4. Every county that now is, or that may hereafter be, established, shall compose an election district, and all elections shall be held at the court house of such county, where one has been erected. If there be no court house, then it shall be the duty of the county commissioners to name a house in such county where the election shall be held; and if such commissioners fail to name such house twenty days before any election, it shall be the duty of the sheriff to name such house. In either of the last two cases, the sheriff shall give notice of the place of holding the election by written advertisements, set up in at least six public places in such county, or by advertisement in some newspaper published in such county, at least ten days before the day of the election: *Provided*, that the county commissioners may, from time to time, establish such additional election precincts as may seem to them necessary or proper; *provided further, however*, that in no case shall more than one precinct be established in any one municipal township.

Proviso.

SEC. 5. The county commissioners shall appoint the judges of election, in each county or voting precinct, at least ten days before the election at which they are to act; and if, at the hour for the opening of the polls, such judges are not present, then the voters assembled shall have power to elect others to fill the vacancy or vacancies thus occasioned. Said judges shall, before they enter on the discharge of their duties, take the following oath or affirmation, to be administered by one of their own body, by the sheriff, or by any officer authorized to administer oaths: I do swear (or affirm) that I will impartially discharge the duties of judge of the present election according to law and the best of my ability.

Judges to be appointed.

SEC. 6. Two blank poll books, with the proper blanks laid off and the proper certificates attached, shall be made out by the clerk of the county commissioners and delivered to the sheriff, at least ten days before the election; and if not so made out and delivered, it shall be the duty of sheriff to cause the same to be made out. The sheriff shall deliver such poll books to the judges of the election so soon as they are elected and qualified. If such poll books be not delivered by the sheriff, the judges of the election shall cause the same to be made out. The certificates shall be in the following form, to wit: We, the undersigned, judges of the election in —— election district, certify that the foregoing is a correct list of the votes given at an election held on the —— day of ——, A. D. ——, as witness our hands this —— day of ——, A. D. —.

Clerk to make out poll books.

Attest, A. B.,
G. H. C. D.,
I. J., clerks of election. E. F., judges.

SEC. 7. The judges of the election shall appoint two clerks, who, before entering upon the discharge of their duties, shall take an oath or affirmation, to be administered by one of the judges, that they will faithfully discharge the duties of clerk according to law and the best of their abilities.

Clerks to be appointed.

SEC. 8. If after the election of any judge or clerk, such judge or clerk resign, or be unable to further continue in the discharge of his duties, the remaining judge or judges shall appoint some suitable person to fill the place of the person or persons so declining, who shall be qualified, and proceed to discharge his duties as if he had been originally selected.

Vacancy to be filled.

SEC. 9. The judges of the election shall open the polls at nine o'clock in the morning, and continue them open until six o'clock in the evening: *Provided, however*, if all the votes offered to be given cannot be taken before the hour appointed for closing the

Polls opened, hours.

Proviso.

polls, the judges shall, by public proclamation, adjourn such election until the following day, when the polls shall again be opened and the election continued as before; but in no case shall the election be continued beyond the second day.

Duty of sheriff.

Sec. 10. It shall be the duty of the sheriff, in person or by deputy, to attend each election, and to cry in an audible voice the name of each voter as given in, and to discharge all other duties imposed on him by law, under the direction of the judges.

Who are qualified voters.

Sec. 11. Every free white male citizen of the United States, and every free male Indian who is made a citizen by treaty or otherwise, and over the age of twenty-one years, who shall be an inhabitant of this territory, and of the county or district in which he offers to vote, and shall have paid a territorial tax, shall be a qualified elector for all elective officers; and all Indians who are inhabitants of this territory, and who may have adopted the customs of the white man, and who are liable to pay taxes, shall be deemed citizens: *Provided*, that no soldier, seaman or mariner, in the regular army or navy of the United States, shall be entitled to vote, by reason of being on service therein: *And provided further*, that no person who shall have been convicted of any violation of any of the provisions of an act of congress, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February 12th, 1793; or of an act to amend and supplementary to said act, approved 18th September, 1850; whether such conviction were by criminal proceeding or by civil action for the recovery of any penalty prescribed by either of said acts, in any courts of the United States, or of any state of territory, of any offence deemed infamous, shall be entitled to vote at any election, or to hold any office in this territory: *And provided further*, that if any person offering to vote shall be challenged and required to take an oath or affirmation, to be administered by one of the judges of the election, that he will sustain the provisions of the above recited acts of congress, and of the act entitled "An act to organize the territories of Nebraska and Kansas," approved May 30, 1854, and shall refuse to take such oath or affirmation, the vote of such person shall be rejected.

Proviso.

Proviso.

Proviso.

Eligibility as delegates, &c.

Sec. 12. Every person possessing the qualification of a voter, as hereinabove prescribed, and who shall have resided in this territory thirty days prior to the election at which he may offer himself as a candidate, shall be eligible as a delegate to the house of representatives of the United States, to either branch of the legislative assembly, and to all other offices in this territory, not otherwise especially provided for: *Provided, however*, that each

Proviso.

member of the legislative assembly, and every officer elected or appointed to office under the laws of this territory, shall, in addition to the oath or affirmation specially provided to be taken by such officer, take an oath or affirmation to support the constitution of the United States, the provisions of an act entitled "An act respecting fugitives from justice and persons escaping from the service of their masters," approved February 12th, 1793; and of an act to amend and supplementary to said last mentioned act, approved September 18th, 1850; and of an act entitled "An act to organize the territories of Nebraska and Kansas," approved May 30, 1854.

Duty of sheriff.

SEC. 13. It shall be the duty of the sheriff to have his tax books at the place of holding elections, and to receive, receipt for, and enter upon his tax book, all taxes which may be tendered him on the day of any election.

Duty of judges of election.

SEC. 14. At the close of each election, the judges of the election, or any two of them, shall cast up the votes given for each candidate, and shall certify the same under their hands, attested by their clerks, a copy of which shall be given to each of the candidates who shall have received the highest number of votes. One of the poll books they shall, within five days, transmit by some suitable person to the secretary of the territory. The other poll book shall be filed in the office of the clerk of the county commissioners, to be kept open to the inspection of all persons.

Duty of secretary.

SEC. 15. If such returns are not received by the secretary of the territory, after allowing a reasonable time for the transmission of the same, he shall send a messenger to the district not returned, with instructions to bring up the same, and the judge and clerk shall immediately send one of the poll books by such messenger.

Duty of secretary

SEC. 16. As soon after the returns are all received as may be, the secretary of the territory shall, in the presence of the governor, proceed to cast up the votes given for the respective candidates, and shall give to the person receiving the highest number of votes for delegate to the house of representatives of the United States a certificate of his election, and to the persons having the highest number of votes in their respective districts certificates of their election to the legislative assembly. The governor shall issue commissions to the persons respectively receiving the highest number of votes for other offices.

List of members.

SEC. 17. Within two days after the meeting of the legislative assembly, the secretary of the territory shall lay before each house a list of the members elected, according to the returns in his office.

When governor to issue proclamation.

SEC. 18. Should any two or more persons receive an equal number of votes at any election and a higher number than any other persons, the governor shall immediately issue his proclamation ordering an election to be held for the election of a person to the office so made vacant, and fixing the day of such election. Such election shall be held and returns thereof made as hereinbefore provided.

Presumption.

SEC. 19. Whenever any person shall offer to vote, he shall be presumed to be entitled to vote.

When vote is challenged.

SEC. 20. When any person offers to vote, his vote may be challenged by one of the judges or by any voter, and the judges of the election may examine him touching his right to vote ; and if so examined, no evidence to contradict shall be received. Or the judges may, in the first instance, receive other evidence ; in which event, the applicant may, if he desire it, demand to be sworn ; but his testimony shall not then be conclusive.

If a vote be rejected, the name of the voter shall be entered on the poll books as a rejected voter, together with the names of the persons for whom such person desired to vote.

Free from arrest.

SEC. 21. All judges, clerks and voters shall be free from arrest, except for felony or breach of the peace, in going to, attending on, and returning from elections ; and the persons taking the returns shall be free from like arrest in going to and returning from the office of the secretary of the territory.

To preserve order, &c.

SEC. 22. The judges of election shall preserve good order, and may punish any disorderly person for contempt, summarily, by fine not exceeding twenty dollars, at their discretion, and commit the offender to jail until the fine be paid.

Penalty for non-return.

SEC. 23. If any person appointed to take the returns of any election to the secretary of the territory, wilfully fail to take the same in due time, he shall be fined in the sum of one hundred dollars, to be recovered by action of debt in the name of the territory, or by indictment ; in either case the fine to go into the county treasury for the use of the county.

Penalty for failure of judges.

SEC. 24. If the judges of any election wilfully fail to certify and transmit the poll books of such election, or to give certificates of the vote given at such election to the persons authorized to receive the same, they shall be severally fined in the sum of one hundred dollars, to be recovered by action of debt in the name of the territory, or by indictment ; in either case the fine to go into the county treasury for the use of the county.

Contested election, course to be pursued.

SEC. 25. If any candidate of the proper district contests any election of any person proclaimed duly elected to the council or house of representatives, for any cause apparent upon the face of the returns, such person shall give notice thereof in writing to the person whose election he contests, or leave a written notice thereof at the house where such person last resided, within twenty days after the return of the election to the office of the secretary of the territory. The notice shall specify the grounds upon which the party contests the election. If the election be contested for causes not apparent upon the face of the returns, a like notice shall be given within forty days after the return of the election, which shall specify the causes for the contest, the names of the votes that are contested, the grounds upon which such votes are illegal, and the name of the justice of the peace who will attend to the taking of the depositions, and when and where he will attend to take the same.

Notice to be given.

SEC. 26. The person whose seat is contested, if he intends to contest the legality of any vote given to the candidate who contests the election, shall, within twenty days after he is notified that his election will be contested, give to the adverse party a similar notice to that specified in the preceding section of this act, and the justice so selected shall proceed to take the depositions of such witnesses as may be brought before him to be examined: *Provided, however*, that either party may without notice take rebutting testimony before the justice, at the time and place specified for the taking of depositions.

Proviso.

When other justice selected.

SEC. 27. If from sickness or other cause the justice selected by either party shall fail to attend at the time and place specified for taking depositions, such party shall without delay select some other justice to supply such vacancy.

Time, notice to be served.

SEC. 28. The notice above required shall be served at least three days before the day appointed for taking depositions, with an additional day for every twenty-five miles that the person so notified shall have to travel from his residence in reaching the place of taking said depositions, and the taking of the depositions by the contestor shall be commenced within fifty days after the election, and the justice shall issue *subpœnas* to all persons required by either party, commanding them to appear and give testimony at the time and place therein mentioned. The justice shall receive and record all testimony offered by either party, and shall certify the same to the president of the council, if the contest be for a seat in the council, and to the speaker of the house of representatives, if the contest be for a seat in the house of representatives.

Probate judge, &c.

SEC. 29. When the election of any judge of any probate court shall be contested, it shall be tried before the district court of the district in which such election was held. Such contest shall be tried at the first term of such court following the election, if such term be not held within forty days after such election; if held within forty days after such election, then the same shall be be tried at the second term.

Notice.

Sec. 30. The party contesting shall, within twenty days after the election, give to the opposite party notice in writing, specifying the grounds of the contest; and if any objections be made to any votes, the names of the voters with the objection shall be related.

Of sheriff, &c., tried before probate court.

Sec. 31. When the election of any sheriff, county commissioner or clerk of any probate court is contested, it shall be tried before the probate court; all other elections of elective officers shall be tried before the county commissioners of the proper county. In all such contests, the persons contesting the election shall give to the opposite party fifteen days before the term of the court at which such election will be contested, notice in writing, specifying the grounds on which he intends to rely; and if any objection be made to the legality of any votes, the names of the voters with the objection shall be stated in the notice. The parties shall respectively be entitled to process for witnesses.

Depositions.

Sec. 32. Either party may, on giving notice to the other, take depositions to be read in evidence on the trial; such notice shall be in writing and served on the parties at least three days; and one day for every thirty miles distance the party served shall have to travel to the place of taking depositions.

Court of determine.

Sec. 33. The court or county commissioners, as the case may be, shall, at its first session, if such session shall be held within twenty days after the election, and if less than twenty days, then at its second session, in a summary manner determine the same according to law and evidence.

When guilty of perjury.

Sec. 34. Every person who shall swear or affirm wilfully, corruptly and falsely in any affidavit, oath or affirmation, taken before any person authorized by this act to take or administer the same, shall be deemed guilty of perjury, and punished as provided by law for the lowest degree of perjury.

Of counties attached.

Sec. 35. When any county by law is attached to another county for civil and military purposes, the county so attached shall not be deemed an election district; but the county commissioners of the county to which such county is attached shall have power, if it be deemed necessary, to establish an election district in the county so attached. An election shall be held at such district as herein provided for other election districts.

Vote by ballot.

Sec. 36. All voting shall be by ballot until the first day of November, 1856, and from and after that time the voting shall be *viva voce*.

This act to take effect and be in force from and after its passage.

CHAPTER 67.

ESCHEATS.

An Act concerning escheats.

§ 1. When property, real or personal, escheats to the territory.
2. Where there are no known heirs, &c., administrator to account, &c.
3. On settlement, balance to be certified, &c.
4. And paid into the treasury, &c.
5. On production of the auditor's certificate, payment to be credited.
6. Proceedings on failure to make payment.
7. Costs, how adjudged.
8. Attorney, when to enforce settlement.
9. Powers and duties of attorney, &c., respecting estates.
10. Proceedings in escheats of real estate.
11. *Scire facias;* against whom it issues.
12. Service and publication, when and how made.
13. Persons interested, when and how to appear and plead.
§ 14. Judgment for the territory, when.
15. Issues made up and tried.
16. Judgment upon verdict, &c.
17. Costs, how adjusted, &c.
18. Form and effect of judgment for the territory.
19. Writ of seizin.
20. Transcripts of record forwarded to auditor and recorder, &c.
21. Appeals and writs of error allowed.
22. Accounts kept by auditor.
23. Proceedings of legal representative to recover his claim.
24. Decree in such cases.
25. Proceedings of heir to recover land escheated. To petition.
26. Copy of petition to be served, on whom.
27. Limitations.
28. Legislature may sell lands escheated, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When property, real or personal, shall escheat to the territory.

Section 1. If any person die seized of any real or personal estate, without any devise thereof, and leaving no heirs or representatives capable of inheriting the same, or the devisees be incapable of holding the same, and where there is no owner of real estate capable of holding the same, such estate shall escheat and vest in the territory.

When there are no known heirs, the administrator to account, &c.

Sec. 2. Where there is administration granted, and there are no known heirs or legal representatives of the intestate, or no person shall appear within three years after granting the letters of administration to claim the personal estate of such intestate as next of kin, the administrator, in the settlement of his accounts with the proper court, shall account for all money which may come to his hands as administrator.

On settlement, balance to be certified &c.

Sec. 3. If there be more than sufficient to pay the debts of the deceased, and the expenses of administration, such court shall, on each settlement, ascertain the amount remaining in the hands of the administrator, and grant duplicate certificates thereof, one of which shall be transmitted to the territorial or district attorney prosecuting for the district, and the other to the auditor of public accounts, who shall charge the administrator with the amount.

And paid into the territorial treasury, &c.

Sec. 4. Such administrator shall pay such balance into the territorial treasury within ninety days after such settlement; and if he shall so pay the same, the treasurer shall grant him duplicate receipts therefor, one of which he shall deliver to the auditor of public accounts, who shall grant him a certificate thereof, and credit him with the amount so paid into the treasury, and shall charge the treasurer therewith.

On production of the author's certificate, account to be credited.

Sec. 5. The court having the settlement of the accounts with such administrator shall, on the production of the auditor's certificate to them, credit the administrator with the amount; but if payment be not made as aforesaid, the territorial or district attorney for the district shall move the court to enter a judgment against such administrator and his securities, or either of them, for such balance, and three per centum per month thereon, giving to such administrator and his securities ten days' previous notice of such intended motion; and the said court shall hear and determine the same in a summary manner.

If the certificate is not produced, court to render judgment against administrator, &c.

Sec. 6. If such administrator or his securities shall not produce the auditor's certificate, showing full payment of the balance into the territorial treasury, such court shall render judgment against such administrator and his securities, or such of them as shall have received notice, for the amount due, and three per centum per month thereon, from the time the balance was first ascertained until the rendition of the judgment, and the costs of the proceedings, and issue execution therefor.

Costs, how adjudged.

Sec. 7. If the auditor's certificate be produced, such administrator and his securities may, nevertheless, be adjudged to pay the costs of the proceedings, at the discretion of the court, but shall in no case recover costs; and the like proceedings shall be had at each subsequent settlement.

Attorney, when to enforce payment.

Sec. 8. When there are no known heirs or legal representatives, the territorial or district attorney of the district within which the courts are held, wherein the accounts of any administrator are required to be settled, shall examine the proceedings of such administrator; shall cause process to be issued to compel the prompt settlement of his accounts; attend such settlement, when necessary, on behalf of the territory; contest any item which to him shall appear unjust or unreasonable; and, in case of waste or mismanagement of the estate, or other mal-administration, cause proper suits and proceedings to be instituted and prosecuted.

Powers and duties of the attornys, respecting estates.

Sec. 9. He is required, in behalf of the territory, to do all things touching such administration which could be done by any sole heir, and especially to preserve the real estate from being improperly sold, wasted or damaged; and it is made his special duty to examine the records of the courts having the settlement of administrators' accounts, and cause process to be issued requiring all administrators, whose letters have been granted more than three years before the taking effect of this act, to make settlement as hereinbefore required, and shall, in default of any such settlement, bring suits against the administrator in default, and his securities, without delay.

Proceedings in escheats of real estate

SEC. 10. When the territorial or district attorney shall be informed, or have reason to believe that any real estate within his district hath escheated to the territory, and such estate shall not have been sold, according to law, within five years after the death of the person last seized, for the payment of the debts of the deceased, he shall file an information in behalf of the territory, in the district court of the county in which such estate is situate, setting forth a description of the estate, the name of te person last lawfully seized, the names of the terre-tenants and persons claiming such estate, if known, and the facts and circumstances in consequence of which such estate is claimed to have escheated, and alleging that, by reason thereof, the territory of Kansas hath right to such estate.

Scire facias against whom to issue.

SEC. 11. Such court shall award and issue a *scire facias* against such person, bodies politic or corporate, as shall be alleged in such information to hold, possess, or claim such estate, requiring them to appear and show cause why such estate should not be vested in the territory, at the next term of such court.

Service and publication, when and how made.

SEC. 12. Such *scire facias* shall be served fifteen days before the return day thereof, and the court shall make an order setting forth briefly the contents of such information, and requiring all persons interested in the estate to appear and show cause, at the next term of the said court, why the same shall not be vested in the territory, which order shall be published for six weeks in some newspaper printed in this territory, and in or nearest the county in which such proceeding is had.

Persons interested, when and how to appear and plead.

SEC. 13. All persons, bodies politic and corporate named in such information as terre-tenants or claimants to the estate, may appear and plead to such proceeding, and may traverse or deny the facts stated in the information, and the title of the territory to the lands and tenements therein mentioned, at any time on or before the third day after the return of such *scire facias*; and any other person claiming an interest in such estate may appear and be made a defendant, and plead, by motion for that purpose, in open court, within the time allowed for pleading.

SEC. 14. If no person appear and plead, or appearing, shall

Judgment for the territory, when, &c.

refuse to plead within the time, then judgment shall be rendered that the territory be seized of the lands and tenements in such information claimed.

Issues made up and tried.

Sec. 15. If any person appear and deny the title set up by the territory, or traverse any material fact in the information, issues shall be made up and tried as other issues of facts, and a survey may be ordered and entered as in other actions when the title or boundaries of land are drawn in question.

Judgment upon verdict, &c.

Sec. 16. If, after the issues are tried, it appears from the facts found or admitted that the territory hath good title to the lands and tenements in the information mentioned, or any part thereof, judgment shall be rendered that the territory be seized thereof, and recover costs against the defendant.

Costs, how adjusted and paid.

Sec. 17. If it appear that the territory hath no title in such estate, the defendant shall recover his costs, to be taxed and certified by the clerk; and the auditor of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the territorial treasury, which shall be paid as other demands on the treasury; but no defendant shall be entitled to recover costs, unless the title to such estate shall appear to the court, from the facts found, to be in him.

Form and effect of judgment for the territory.

Sec. 18. When any judgment shall be rendered that the territory be seized of any real estate, such judgment shall contain a description of such estate, and shall vest the title in the territory.

Writ of seizin.

Sec. 19. A writ shall be issued to the sheriff of the same county, commanding him to seize the real estate vested in the territory.

Transcript of record, &c., to be forwarded to the auditor and recorded, &c.

Sec. 20. Upon the return of such writ of seizin, the territorial or district attorney shall cause the record and process to be exemplified under the seal of the court, and deposit the same in the office of the auditor of public accounts, and cause a transcript of the judgment to be recorded in the office of the recorder of the county in which the lands lie; and such judgment shall preclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in force.

Appeals and writs of error allowed.

Sec. 21. Any party who shall have appeared to any proceedings, and the territorial or district attorney on behalf of the territory, shall have the right to prosecute an appeal or writ of error upon any such judgment.

Accounts kept by auditor.

Sec. 22. the auditor shall keep just accounts of all money paid into the treasury, and of all lands vested in the territory aforesaid.

Proceedings of legal representative to recover his claim.

Sec. 23. If any person appear within ten years after the death of the intestate, and claim and money paid into the treasury aforesaid as heir or legal representative, he may file a petition in the district court, as a court of chancery, for the county where the estate is, stating the nature of his claim, and praying that such money may be paid him; a copy of which petition shall be served upon the territorial or district attorney, who shall put in an answer to the same.

Decree in such cases.

SEC. 24. The court shall examine the said claim and the allegations and proofs, and if they find that such person is entitled to any money so paid into the treasury, such court shall order the auditor to issue his warrant on the treasurer for the payment of the same, but without interest or costs; a copy of which order, under the seal of the court, shall be a sufficient voucher for issuing such warrant.

Proceedings of heir to recover land escheated.

SEC. 25. If any person appear and claim lands vested in the territory, as aforesaid, within five years after the judgment was rendered, such person (other than such as were served with a *scire facias*, or appeared to the proceeding, their heirs or assigns) may file his petition in the court, as a court of chancery, of the county in which the claimed estate shall be, setting forth the nature of his claim, and praying that the said estate may be relinquished to him.

To petition.

Copy of petition to be served, on whom.

SEC. 26. A copy of this petition shall be served on the territorial or district attorney of the district, who shall answer; and the court shall examine the claim and the allegations and proofs, and if it appear that the person is entitled to such claim, the court shall decree accordingly, which shall divest the interest of the territory in such estate; but no costs shall be adjudged against the territory in such case.

Proceedings thereon.

Limitation.

SEC. 27. All persons who fail to appear and file their petitions within the time limited shall be forever barred; saving, however, to infants, married women, and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petition at any time within five years after their respective disabilities have been removed.

Legislature may sell lands escheated, &c.

SEC. 28. The legislative assembly may cause such estate to be sold at any time after seizure in such manner as may be provided by law, in which case the claimants shall be entitled to the proceeds in lieu of the real estate, upon obtaining a decree or order as aforesaid.

This act to take effect and be in force from and after its passage.

CHAPTER 68.

EVIDENCE.

An Act concerning evidence.

§ 1. Statutes printed by authority, evidence.
2. Printed statute books of sister states, evidence.
3. Copies of acts, laws, &c., in printed statute books of sister states, &c., shall be evidence, when.
4. Books printed by authority, containing the acts of congress, shall be evidence, when.
5. Copies of such acts certified by the secretary, evidence.
6. Printed volumes containing the laws of sister states, *prima facie* evidence.
7. Public documents printed by authority of congress, evidence.
8. Effect of acknowledgments respecting real estate taken under any law afterwards repealed.
9. Deed acknowledged under former law shall be evidence if recorded, &c., within one year from its date, &c.
10. Such deed may be read in evidence, &c., on proof of certain facts.
11. In case of the loss or destruction of such deed, a certified copy thereof shall be evidence.
12. Evidence may be introduced to reject such deed or copy.
13. Copies of proceedings before justices of the peace, evidence.
§ 14. Copies of papers on file in the office of secretary of territory shall be evidence.
15. Certified copies of justice's docket, &c., shall be evidence, when.
16. Where justice is out of office, copies of proceedings, &c. to be evidence, when.
17. Printed and certified copies of ordinances, &c., of city or incorporated town, evidence, when.
18. Register of religious society or congregation to be evidence, when.
19. Copies of such register shall be evidence, when.
20. Recorder's book of marriages and certified copies thereof, evidence.
21. Certified copies of all bonds of officers, &c., shall be received in evidence.
22. Certified copies of contracts made with the territory or county, &c., shall be evidence, when.
23. Copies of bonds of executors, administrators, &c., shall be evidence, when.
24. Court may require the production of the original bond or writing, when.
25. Translated copies of written evidence, verified by affidavit, shall be evidence, when.
26. Copies of papers, &c., in the treasurer's or auditor's office, evidence.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Statutes printed by authority of this territory, evidence &c.

Section 1. The printed statute books of this territory, printed under authority, shall be evidence of the private acts therein contained.

Printed statute books of sister states, &c., evidence.

Sec. 2. The printed statute books of sister states and the several territories of the United States, purporting to be printed by the authority of such states or territories, shall be evidence of the legislative acts of such states or territories. (*a*)

Certified copies of acts, laws, &c., in printed statutes of sister states, &c., shall be evidence, when.

Sec. 3. Copies of any act, law or resolution contained in the printed statute books of sister states and the territories of the United States, purporting to be printed, by authority, and which are now or may be hereafter deposited in the office of the secretary of this territory and required by law to be there kept, certified under the hand and seal of office of the secretary of this territory, shall be admitted as evidence.

(*a*) Brite vs. White, 8 Missouri Rep., p. 421.

Books printed by authority containing the acts of congress, shall be evidence.

SEC. 4. The printed books containing the acts of the congress of the United States, purporting to be published by authority of said congress, or by authority of the United States, shall be evidence of the laws, public or private, general, local or special, therein contained.

Copies of such acts certified by secretary, evidence.

SEC. 5. Copies of any act, law or resolution contained in any such book, now or hereafter deposited in the office of the secretary of this territory, certified under the hand and official seal of said secretary, shall be received in evidence.

Printed volumes of laws of sister states *prima facie* evidence.

SEC. 6. The printed volumes, purporting to contain the laws of a sister state or territory, shall be admitted as *prima facie* evidence of the statutes of such states and territories.

Public documents printed by authority of congress, evidence.

SEC. 7. Public documents purporting to be edited or printed by authority of congress, or either house thereof, shall be evidence to the same extent that authenticated copies of the same would be.

Effect of acknowledgments respecting real estate taken under any law, afterwards repealed.

SEC. 8. Every instrument of writing, conveying or affecting real estate, and the certificate of the acknowledgment or proof thereof, made in pursuance of any law in force at the time of such acknowledgment or proof, but afterwards repealed, shall be evidence to the same extent, and with like effect, as if such law remained in full force.

Deed acknowledged under a former law, shall be evidence if recorded, &c., within one year from its date, &c.

SEC. 9. Any deed or conveyance, duly acknowledged or proved, and recorded, according to any law in force at the time of taking such acknowledgment or proof, although not declared by such law to be evidence, shall be received in evidence, if it appear to have been duly recorded in the proper office within one year from its date, and more than twenty years from the time it is offered in evidence.

Such deed may be read in evidence, &c., on proof of certain facts.

SEC. 10. Such deed or conveyance (*d*) of acknowledgment, proved and recorded according to law, though not recorded within one year from the date, or twenty years before it is offered, may be read in evidence, upon proof of such facts and circumstances, as, together with the certificate or acknowledgment or proof, will satisfy the court that the person who executed the instrument is the person therein named as grantor; (*e*)

In case of the loss or destruction of such deed, a certified copy thereof shall be evidence.

SEC. 11. Whenever it shall appear that the original deed or conveyance, in either of the cases specified in the two preceding sections, has been lost or destroyed, or is not in the power of the

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(*d*) In Moss vs. Anderson, 7 Missouri Rep., 337-8, the term "conveyance," used in this and the succeeding section, was held to embrace such instruments as were understood to be conveyances at the date of the instrument offered; hence an instrument conveying land, executed prior to 1816, although not under seal, is within the provision.

(*e*) It is not necessary to call the subscribing witnesses to prove the identity of the grantor, or to account for their absence; Moss vs. Anderson, 7 Missouri Rep., 341.

party who wishes to use it, a certified copy of the record thereof, and of the certificate of acknowledgment or proof, shall be received in evidence, upon like proof as is required in case of the original, and with like effect.

Evidence may be introduced to reject such deed or copy.—*Ibid.*

SEC. 12. Wherever any deed, conveyance, or other evidence of title, or a copy thereof, shall be offered in evidence, under the provisions of either of the preceding sections, and objected to, the party objecting may introduce evidence to show that the original is not what it purports to be, or that it was not executed by those in whose name it was executed, or that the copy offered is not a true copy of the original; and the court shall determine thereon, and admit or reject the instrument, according to the evidence.

Copies of proceedings before justices of the peace, evidence.

SEC. 13. Copies of proceedings before justices of the peace, certified by the justice before whom the proceedings are had, shall be evidence of such proceedings.

Copies of papers on file in the office of secretary, &c., shall be evidence.

SEC. 14. Copies of all papers on file in the office of the secretary of the territory, treasurer, auditor of public accounts, and register of lands, or of any matter recorded in either of said offices, certified under the seal of the respective offices, shall be evidence in all courts of this territory.

Certified copies of justice's docket, &c., shall be evidence, when.

SEC. 15. Where the docket, files, books and papers of a justice of the peace shall have been delivered to the clerk of any court of record, according to law, copies of such docket, files, books or papers, certified by such clerk, shall be evidence.

When justice is out of office, copies of proceedings to be evidence, when.

SEC. 16. Copies of proceedings had before a justice of the peace, where such justice is out of office, certified by the justice who is in possession of the docket and papers of such justice, shall be received in evidence in any court in this territory. (*f*)

Printed and certified copies, &c., of ordinances, &c., of city or incorporated town, evidence, when.

SEC. 17. Printed copies of the ordinances, resolutions, rules, orders and by-laws of any city or incorporated town in the territory, published by authority of such city or incorporated town, and manuscript copies of the same, certified under the hand of the proper officer, and having the corporate seal of such city or town affixed thereto, shall be received as evidence.

Register of religious society, to be evidence, when.

SEC. 18. When, by the ordinance or customs of any religious society or congregation in this territory, a register is required to be kept of marriages, births, baptisms, deaths or interments, such register shall be admitted as evidence.

Copies of such register shall be evidence, when.

SEC. 19. Copies of the register referred to in the preceding section, certified by the pastor or other head of any such society or congregation, or by the clerk or other keeper of such register,

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(*f*) Palmer vs. Hunter, 8 Missouri Rep., 512.

and verified by his affidavit in writing, shall be received in evidence.

Recorder's book of marriages and certified copies thereof, evidence.

SEC. 20. The book of marriages to be kept by the respective recorders, in pursuance of the provisions of the act entitled "An act regulating marriages," and copies thereof certified by the recorder, under his official seal, shall be evidence in all courts.

Certified copies of all bonds of officers, &c. shall be received in evidence.

SEC. 21. Copies of all bonds required by law to be given by all county officers, collectors of the revenue, clerks of the courts of record in the territory, recorders, and all other officers of or under the territory who are required by law to give bond for the faithful performance of their duties, duly certified by the seal of office of the officer in whose custody such bond is required by law to be kept, may be sued upon, and shall be received in evidence, to all intents and purposes, as the originals themselves.

Certified copies of contracts made with the territory or county, &c., shall be evidence, when.

SEC. 22. Copies of contracts entered into by individuals with the territory, or any officer thereof, or with any county, or with any person for the benefit of any county, under or by authority of any law, or the lawful order of any court, the originals of which are by law or the lawful order of any court in the custody and keeping of any officer, duly certified and attested by the official seal of such officer, or, if such officer has no official seal, then verified by the affidavit of such officer, may be sued upon, and shall be received in evidence, to all intents and purposes, as the originals themselves.

Copies of bonds of executors, administrators, &c. shall be evidence, when.

SEC. 23. Copies of all bonds required by law to be given by executors, administrators, guardians, curators and commissioners, for the faithful discharge of their duties as such, and the bonds of principals and sureties, required to be taken in the course of any judicial proceedings in any of the courts of this territory, duly certified by and attested with the seal of office of the officer to whom by law the custody of the same is committed, shall be evidence to all intents and purposes as the originals themselves.

Court may require the production of the original bond or writing, when.

SEC. 24. Where suit shall be brought upon any copy of a bond or contract in writing, mentioned in any of the three preceding sections, and the defendant shall plead *non est factum*, or, on motion to the court, such plea or motion being verified by affidavit, the court may, if necessary to the attainment of justice, require the production of the original bond or other writing.

Translated copies of written evidence, &c., verified by affidavit, shall be evidence, when.

SEC. 25. Whenever any written evidence in a cause shall be in a language other than the English, a written translation thereof into the English language, made by a competent translator, and verified by his affidavit, may be read in evidence instead of the original, if such original be competent evidence.

Copies of papers, &c., in the treasurer's or auditor's office, evidence.

Sec. 26. Copies of all papers and documents lawfully deposited in the office either of the treasurer or auditor of the territory, when certified by such officer, and authenticated by the seal of office, shall be received in evidence in the same manner and with the like effect as the originals.

This act to take effect and be in force from and after its passage.

CHAPTER 69.

EXECUTIONS.

An Act to regulate executions.

§ 1. In whose favor executions may issue.
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Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

In whose favor execution may issue.

Section 1. The party in whose favor any judgment, order or decree is rendered by any court of record, may have an execution in favor of the judgment, order or decree. (a)

To issue against the goods, chattels and real estate.

Sec. 2. Such execution shall be a *fieri facias* against the goods, chattels and real estate of the party against whom the judgment, order or decree shall have been rendered.

(a) As to the adjudications of the supreme court on the subject of executions, see Brown vs. sheriff of Cape Girardeau county, 1 Missouri Rep., 108; Ramsey, ex'r, vs. Waters et al., *ibid*, 287; Dowsman vs. Potter, *ibid*, 368; Scott vs. Whitehill and Finch, *ibid*, 494; Ravenscroft vs. Giboney, 2 Missouri Rep., 3; McNair et al. vs. McLane, *ibid*, 48; Blair vs. Caldwell, 3 Missouri Rep., 249; Coonce vs. Munday, *ibid*, 264; Lindell vs. Wash, *ibid*, 358; Posey vs. Buckner, *ibid*, 413; Bartlett vs. Glasscock et al., 4 Missouri Rep., 62; Burk et al. vs. Flurnoy, *ibid*, 116; Lindell vs. Benton et al., 6 Missouri Rep., 361; Hatfield vs. Wallace, 7 Missouri Rep., 112; Davis vs. Wood, *ibid*, 162; Harrison vs. Martin, *ibid*, 286; Hicks et al. vs. Perry, *ibid*, 346; Sweringen vs. administrator of Eberius, *ibid*, 421; Van Winkle et al. vs. McKee et al., *ibid*, 435; Fisher vs. Gordon, 8 Missouri Rep., 386; King vs. Bailey, *ibid*, 332, Rector vs. Hart, *ibid*, 448.

Form of the execution against the estate of defendant.

SEC. 3. Executions against the estate of the defendant shall be in the form, or of the effect, following: "The territory of Kansas to the sheriff of the county of——: Whereas, A. B., on the —— day of ——, in the year of our Lord eighteen hundred and ——, at our court, hath recovered against C. D. the sum of —— for debt, (or damages, as the case may be,) and also for the sum of ——, which to the said A. B. were adjudged for his damages, as well by reason of detaining the said debt, as for his costs in that suit expended: These are, therefore, to command you, that of the goods and chattels, and real estate, of the said C. D., you cause to be made the debt, damage and cost, (or damages and costs,) and that he have the same before the judge of said court, on the — day of ——, to satisfy the debt, damages and costs aforesaid (or damages alone and costs); and that you certify how you execute this writ. Witness: E. F., clerk of the said —— court, at ——, this —— day of ——, in the year ——.

E. F., clerk."

Execution against heir, or devisee, &c.

SEC. 4. When such execution shall be issued against any person as heir or devisee, the officer to whom the same shall be directed shall be commanded, only, that of the goods and chattels which were of the ancestor or testator at the time of his death he cause to be made the debt, damages and costs; and if sufficient goods and chattels cannot be found in his county, then that of the real estate which was of the ancestor or testator at the time of his death he cause to be made the debt, damages and costs, or sum of money, in such execution specified.

Executions, when returnable.

SEC. 5. Executions issuing from any court of record shall be made returnable at the next succeeding term thereof, unless the plaintiff, or person to whose use the suit was brought, shall otherwise direct; then it shall be the duty of the clerk, issuing the same, to make it returnable to the succeeding term thereof. (b)

Garnishees to be summoned if no property found.

SEC. 6. When a *fieri facias* shall be issued and placed in the hands of an officer for collection, if no sufficient property can be found in the county whereof to levy the amount due on said writ, it shall be the duty of the officer to summon, in writing, as garnishees, all such debtors of the defendant as the plaintiff, his agent or attorney, shall direct, to appear in court at the return day of the *fieri facias*, to answer, on oath, such interrogatories as may be exhibited against him, on the part of the plaintiff, touching his indebtedness to the defendant in the execution; and the like proceedings shall be had, and the like judgment rendered, for or against the garnishee, as are or may be provided in cases of garnishees summoned in suits originating by attachments. (c)

(b) The sheriff, though bound to notice that the writ is tested by the proper officer, and authenticated as the law requires, and that it contains a command which the court, from which it emanates, is authorized to make, is not responsible for the validity of the judgment or the proceedings previous thereto; Brown vs. Henderson, 1 Missouri Rep., 134.

Sheriff or collector not to be summoned as garnishee. County buildings not subject to execution.

SEC. 7. No sheriff, county collector, or collector of the revenue of any county, shall be summoned as garnishee under the provisions of the preceding section; nor shall any thing contained in an act entitled "An act to enable counties to make contracts, and hold and convey real estate," be so construed as to subject any court-house, jail, clerk's office, or any other public building, or the lots of ground on which they may be situated, belonging to any county, to the execution of any creditor of such county.

Executions, where directed and executed.

SEC. 8. Executions issued upon any judgment, order or dedree, rendered in any court of record, may be directed to and executed in any county in this territory.

Duties of clerk in issuing executions.

SEC. 9. The clerk shall endorse upon every execution by him issued, the debt, and damages, and costs, to be recovered, before the delivery of such execution to be executed, and shall keep in his office a well bound book, and enter therein an abstract of all executions issued out of his office, showing the date, the names of the parties, amount of debt, damages and costs, to what officer directed, the return, (if any,) and a reference to the book and page wherein the judgment or decree whereon such execution issued is entered; and every such clerk shall, moreover, keep a regular index to such abstract of execution, arranged alphabetically, both by the name of the plaintiff and defendant therein.

Property exempt from execution.

SEC. 10. The following property shall be exempt from execution, when owned by any person other than the head of a family: *First*, The wearing apparel of all persons whatever; *Second*, the necessary tools and implements of trade of any mechanic, whilst carrying on his trade. (d)

When owned by the head of a family.

SEC. 11. The following property, when owned by the head of a family, shall be exempt from levy and sale, under any execution: *First*, ten head of choice hogs, ten head of choice sheep, two cows and calves, one plough, one axe, one hoe, and one set of plough gears; *Second*, working animals of the value of sixty-five dollars; *Third*, the spinning wheels and cards, one loom and apparatus, necessary for manufacturing cloth in a private family; *Fourth*, all the spun yarn, thread and cloth, manufactured for family use; *Fifth*, any quantity of hemp, flax and wool, not exceeding twenty-five pounds each; *Sixth*, all wearing apparel of the family, two beds, with the usual bedding, and such other household and kitchen furniture, not exceeding the value of twenty-five dollars, as may be necessary for the family, agreeably to an inventory thereof, to be returned on oath, with the execution, by the officer whose duty it may be to levy the same; *Seventh*, the necessary tools and implements of trade of any mechanic, while carrying on his trade; (e) *Eighth*, all arms and military equipments required by law to be kept; *Ninth*, all such provisions as may be on hand for family use, not exceeding twenty-five dollars in value; *Tenth*, all lawyers, physicians, and ministers of the gospel, shall have the privilege of selecting such books as shall be necessary to their profession, in the place of other property herein allowed, at their option; that doctors of medicine, in lieu of the property exempt from execution, may be allowed to select their medicines: *Provided*, nothing in this act shall be so construed as to exempt any property whatever from sale, for the payment of taxes now due, or hereafter to become due, to this territory or any county thereof.

(c) The validity of a deed of assignment cannot be tried in a court of law, upon an issue made between a judgment creditor and the assignee, garnisheed on an execution under the provisions of this section; Van Winkle and Randall vs. McKee, et al., 7 Missouri Rep., 435.

(d) If a mechanic conceives the design of absconding, and accordingly abandons his trade, his tools and implements become subject to execution; Davis vs. Wood, 7 Missouri Rep., 166.

Working animals exempt shall be selected by defendant.

Officer to apprise him of his right. To be appraised, by whom.

If sold for more than $65, proceedings.

Sec. 12. The working animals mentioned in the second clause of the preceding section shall be selected by the defendant, and the officer shall apprise him of his right to make such selection, and shall cause the animals so selected to be appraised, under oath, by three disinterested householders of the vicinage; and if the animals shall not be appraised to and sold for more than sixty-five dollars, the defendant shall retain them; but if appraised for more, they shall be offered for sale; and if sold for more than sixty-five dollars, that sum shall be paid to the defendant in the execution, and the remainder to the plaintiff.

If the head of a family, being married, absconds &c., his wife may claim the property exempt from execution, &c.

Sec. 13. When the articles specified in the last preceding section shall belong to a married man, and he, at the time the execution is levied, or at any time before the sale under it, has absconded or absented himself from his place of abode, his wife may claim the said articles, and receive the same from the officer; and may, if the said articles are taken or withheld from her, in her own name sue for and recover the same, or the value thereof, and in such suit shall not be required to give security for costs.

What property shall be liable to be seized and sold upon execution.

Sec. 14. The following property shall be liable to be seized and sold upon any execution issued upon a judgment, order, or decree, of any court of record: *First*, all goods and chattels hereinbefore exempted; *Second*, all slaves, and the rights and shares in the stock of any bank, insurance company, turnpike company, or other corporation; *Third*, all current gold and silver coin, which shall be returned by the officer as so much collected, without exposing the same to sale; *Fourth*, any bills or other evidences of debt, issued by any moneyed corporation, or by the government of the United States, this territory, or any state or territory, belonging to any person against whom an execution shall be issued, at the time such writ shall be delivered to the officer, or at any time thereafter; *Fifth*, all real estate whereof the defendant, or any person for his use, was seized in law or equity, on the day of the rendition of the judgment, order or decree whereon execution issued, or at any time thereafter. (*f*)

(e) Harrison vs. Martin, 7 Missouri Rep., 286.

No execution to issue against executors or administrators, &c. when.

Sec. 15. No execution shall issue upon any judgment or decree rendered against the testator or intestate in his life-time, or against his executors or administrators after his death, which judgment or decree constitutes a demand against the estate of any testator or intestate, within the meaning of an act entitled "An act respecting executors and administrators;" but all such demands shall be classed and proceed on, in the probate court, as required by said act.

Execution to be a lien on personal property only from delivery.

Sec. 16. No execution shall be a lien on any slaves, goods, chattels or other personal property, or the rights or shares in any stock, or any real estate, to which the lien of the judgment, order or decree does not extend, or has expired, but from the time such writ shall be delivered to the officer of the proper county. (*g*)

Sheriffs, &c., to endorse on executions the time when received.

Sec. 17. The several sheriffs, and their deputies, shall, upon the receipt of a writ of execution, without fee for doing the same, endorse thereon the day of the month and year when they received the same; if two or more writs shall be delivered on the same day against the same persons, they shall have equal rank and be executed accordingly.

Cashier, &c, of bank or other corporation, shall, on request of officer, give information, &c., of rights, shares, &c, of defendant in execution.

Sec. 18. When an execution shall be issued against any person being the owner of any shares or stock in any bank, insurance company, turnpike company, or other corporation, it shall be the duty of the cashier, secretary, or chief clerk of such bank, insurance company or turnpike company, or other corporation, upon the request of the officer having such execution, to furnish him with a certificate under his hand, stating the number of rights or shares the defendant holds in the stock of such bank, company or corporation, with the incumbrance thereon.

(*f*) As to the validity of sales under executions, see Kean vs. Newell, 1 Missouri Rep., 254; S. C. 2; *ibid*, 10.

(*g*) See McNair vs. O'Fallon, 8 Missouri Rep., 188; Benton vs. Mullanphy's executor, 8 Missouri Rep., 650.

Execution, how levied after such information.

SEC. 19. The officer, upon obtaining such information, or in any other manner, may take a levy of such execution on such rights or shares, by leaving a true copy of such writ with the cashier, secretary, or chief clerk; and if there be no such officer, then with some other officer of such bank, company or corporation; with an attested certificate by the officer making the levy, that he levies upon and takes such rights and shares to satisfy such execution.

Defendant in execution may elect what property shall be sold.

SEC. 20. The person against whom any execution shall be issued, may elect what property, real or personal, shall be sold to satisfy the same; and if he gives to the officer a list of the property so elected, sufficient to satisfy such execution, the officer shall levy upon the property and no other, if, in his opinion, it is sufficient; if not, then upon such additional property as shall be sufficient.

Proceedings when property or shares in bank or other corporation is seized upon by virtue of execution. Jury to be summoned.

SEC. 21. When personal property, or any shares in any bank, company or corporation, or other effects, shall be seized by virtue of an execution, and any person, other than the person against whom such execution issued, shall claim such property, or any part thereof, and shall give notice thereof in writing, the sheriff may summon a jury to determine the right of property, giving ten days' notice of the time and place of holding the inquest, to the plaintiff in the execution, or his attorney.

Witnesses may be summoned, &c. Verdict of jury to be full indemnity to officer.

SEC. 22. The sheriff, at the request of either party, or at his own instance, may summon witnesses, and compel them to attend and give testimony, and may administer necessary oaths to the jurors and witnesses; and the verdict of such jury, being rendered in writing, and signed by the foreman, shall be a full indemnity to such officer proceeding thereon. (*h*)

Costs, how adjudged in such cases.

SEC. 23. The sheriff and witnesses shall be allowed the like fees as for similar cases in the district court; and if the verdict be against the claimant, he shall pay all costs attending the inquest; and if found for him, the plaintiff in the execution shall pay them; and the sheriff may levy all costs upon the goods and chattels of the party made liable to pay them, as on execution.

When trial shall not proceed.

SEC. 24. If, at any time before the jury return, the claimant withdraw his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

Notwithstanding verdict for claimant, officer may sell, on plaintiff giving him an indemnity bond.

SEC. 25. Notwithstanding the jury find the goods and chattels to be the property of the claimant, yet the officer shall proceed to sell the same in satisfaction of the execution, if the

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(*h*) Fisher vs. Gordon, 8 Missouri Rep., 386; Brown vs. Burns, *ib.*, 26. The sheriff may, if he choose, take a bond of indemnity from the plaintiff in the execution, and sell, and such bond is held valid; but the sheriff may refuse to sell.

plaintiff will tender to him a bond, payable to the officer, with good security, resident of the county, and conditioned to indemnify him against all damages and costs which he may sustain in consequence of the seizure and sale of the property on which the execution shall have been levied; and, moreover, to pay and satisfy to any person or persons claiming title to such property, all damages which such person or persons may sustain in consequence of such seizure and sale.

Such bond to be returned with the execution Claimant may prosecute, when.

Sec. 26. If such bond and security be given, it shall be returned by the officer, together with the execution, and filed in the office from which the execution issued; and the claimant may, in the name of the officer to whom the bond is payable, prosecute his or her suit upon the bond, and recover such damages as a jury may assess.

Such bond shall bar claimant's right of action against the officer.

Sec. 27. After the due execution of such bond, the claimant shall be barred of his right of action against the officer, unless the obligors in the bond shall have been insolvent at the time such bond was executed.

Real estate to be divided, when, and not more sold than necessary.

Sec. 28. When an execution shall be levied upon real estate, the officer levying the same shall divide such property, (if susceptible of division,) and sell so much thereof as will be sufficient to satisfy such execution, unless the defendant in the execution shall desire the whole of any tract or lot of land to be sold together, in which case it shall be sold accordingly. (*i*)

Defendant may elect what property to be first sold; proceedings.

Sec. 29. The person whose goods, chattels and real estate, are taken in execution, may elect what part thereof shall be first sold; and if he shall deliver to the officer having charge thereof, a statement in writing of such election, three days before the day appointed for the sale, stating specifically what goods, chattels and real estate he desires to be first sold, and so on until the execution be satisfied, the officer shall proceed according to such election until sufficient moneys shall be made to satisfy the amount in the execution specified, and costs.

No property to be sold till ten days' notice of time and place of sale be given, &c

Sec. 30. No goods and chattels, or other personal effects, seized and taken by virtue of any execution, shall be sold, until the officer having charge of the writ shall have given ten days' notice of the time and place of sale, and of the property to be sold, by at least three advertisements, put up in public places in the township in which the sale is to be made; and when any slave

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(*i*) When more property is sold by a sheriff, under execution, than is sufficient to satisfy the execution, and the property could have been sold in parcels, the court will set aside the sale on motion; Hicks & H. vs. Perry, 7 Missouri Rep., 346. See also Rector vs. Hartt, 8 Missouri Rep., 448, where it is held, that a violation of this injunction on the sheriff, will not make a sale void, though it may be good cause for setting it aside.

is to be sold, also, by one like advertisement put up at a public place in each adjoining township within the same county.

Personal property levied on may be retained till day of sale by giving bond.

Sec. 31. When the sheriff or other officer charged with the service of an execution shall levy it upon personal property, the defendant may retain possession thereof until the day of sale, by giving bond in favor of the plaintiff, with sufficient security, to be approved by the officer, in double the value of such property, conditioned for the delivery of the property to the officer, at the time and place of sale to be named in such condition.

Condition thereof.

Property not delivered, levy to remain a lien, &c.

Sec. 32. If the property be not delivered according to the condition of the bond, the levy shall remain a lien upon the property taken for the satisfaction of the judgment, into whose possession soever the property may pass.

Condition of bond broken, officer to seize other property and sell it, how, &c.

Sec. 33. When the condition of the bond shall be broken as mentioned in the last section, the officer may seize any property of the defendant subject to the execution, and sell the same, if personal property, on three days' notice; if real estate, on ten days' notice, to satisfy the judgment.

If on breach of the condition, execution is returned unsatisfied, plaintiff may move for judgment on the bond, when.

Sec. 34. If the condition of the bond be broken, and the execution returned unsatisfied, the defendant and his sureties shall be deemed to have notice of the facts, and the plaintiff, without further notice, may, on the first or any subsequent day of the return term of the execution, move the court for judgment on the bond, against the defendant and his sureties, or any of them; or the plaintiff may, at his option, bring suit upon the bond.

Motion to be heard and determined in a summary way.

Sec. 35. If the controversy arise on the motion, it shall be heard and determined in a summary way, without the form of pleading, and, unless the demand be avoided, a judgment shall be rendered thereon without delay, according to the circumstances, as follows: If the value of the property so levied on, and not delivered at the day of sale, be less than such amount, the judgment shall be for the property so not delivered, with ten per cent. damages for the delay and costs in both cases.

No second delivery bond shall be taken, when.

Sec. 36. No second delivery bond shall be taken in behalf of a defendant so failing to comply with the first; nor shall any such bond be taken of a surety upon a judgment founded on such bond.

Delivery bond to be returned with the execution.

Sec. 37. Every delivery bond shall be returned with the execution; and if the officer fail to return the same, or the same be adjudged insufficient at the return term of the execution, he shall stand as surety for the defendant for the delivery of the property levied on, and may be proceeded against as such.

Sale to be 15 days before return, when.

Sec. 38. If there be sufficient time, the officer shall appoint the day of sale at least fifteen days before the return day of the execution.

Sec. 39. The eight preceding sections shall apply to justices' courts, so far as they are applicable under the general laws.

The eight preceding sections shall apply to justices' courts.

Sec. 40. When real estate shall be taken in execution by any officer, it shall be his duty to expose the same to sale, at the court-house door, on some day during the term of the district or probate court, having previously given twenty days' notice of the time and place of sale, and what real estate is to be sold, and where situated, by at least six handbills, signed by him, and put up in public places in different parts of the county, or by advertisements in some newspaper printed in the county.

Sale of real estate, when and where made; notice of sale, how given.

Sec. 41. All property taken in execution by any officer shall be exposed to sale on the day for which it is advertised, between the hours of nine in the forenoon and five in the afternoon, publicly, by auction, for ready money, and the highest bidder shall be the purchaser.

Sale, how conducted; within what hours.

Sec. 42. If the purchaser refuse to pay the amount bid by him, for property struck off to him, the officer making the sale may again sell such property, at any time, to the highest bidder; and if any loss shall be occasioned thereby, the officer shall recover the amount of such loss, with costs, by motion before any court, or before any justice of the peace, if the sum shall not exceed his jurisdiction.

Purchaser refusing to pay, property to be re-sold.

Loss, if any, recovered by motion, &c.

Sec. 43. Such court or justice shall proceed in a summary manner, and give judgment and award execution therefor forthwith; and the same proceedings shall be had against any subsequent purchaser who shall refuse to pay, and the officer may, in his discretion, forever thereafter refuse the bid of any person so refusing.

Court of justice to proceed in a summary manner.

Sec. 44. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser or purchasers refusing to pay.

Officer how far liable under two preceding sections.

Sec. 45. No officer to whom any execution shall be directed, or any of his deputies, or any person for them, shall purchase any goods or chattels, real estate or other effects, at any sale made by virtue of such execution, and all purchases so made shall be void.

Officer not to purchase property, &c.

Sec. 46. When the purchaser of any goods or chattels shall pay the purchase money, the officer selling the same shall deliver him such property; and, if desired, shall execute an instrument of writing, drawn and delivered to him at the expense of such purchaser, testifying the sale and payment of the purchase money, and conveying to such purchaser all the right, title and interest, which the debtor had in and to the property sold, on the day the execution shall be delivered.

Personal property to be delivered to purchasers.

Bills of sale thereof given if required.

If real estate levied upon be not sold at first term of court, &c., the execution to continue in force to the end of second term.

SEC. 47. In all cases where an execution shall be issued and levied by the proper officer upon real estate, and for any cause a sale of such real estate, without the fault of the officer, cannot be made at the first term of the district or probate court of the county in which such sale is to be made, the execution shall continue in force until the end of the second term of the district or probate court of the county to which such writ is directed, and the officer shall, in all such cases, proceed to advertise and sell the real estate according to law.

Bill of sale of bank stock, &c, to be made; effect thereof.

SEC. 48. When any rights or shares of stock in any bank, company or corporation shall be sold, the officer making such sale shall execute an instrument in writing, to be drawn at the expense of the purchaser, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares; and shall also leave with the cashier, secretary or chief clerk, or, if there be none, with any other officer of such bank, corporation or company, a copy of the execution and his return thereon; and the purchaser shall, thereupon, be entitled to all dividends and stock, and to the same privileges as a member of such company or corporation, as such debtor was entitled to.

Deed to be executed for real estate; what it shall recite &c.

SEC. 49. The officer who shall sell any real estate, or lease of lands and tenements for more than three years, shall make to the purchaser a deed, to be paid for by the purchaser, reciting the names of the parties to the execution, the date when issued, the date of the judgment, order or decree, and other particulars as recited in the execution; also a description of the property, the time, place and manner of the sale; which recital shall be received as evidence of the facts therein stated.

Such deeds, how acknowledged.

SEC. 50. Every officer executing any deed for lands, tenements or hereditaments, sold under execution, shall acknowledge the same before the district or probate court of the county in which the estate is situated; but if he die or leave the territory, resign, or be removed from office, or otherwise disqualified from acting before making such acknowledgment, such deed may be proved before such court as other deeds.

Clerk to endorse certificate of acknowledgment on such deed, &c.

SEC. 51. The clerk of such court shall endorse upon such deed a certificate of the acknowledgment or proof, under the seal of the court, and shall make an entry of such acknowledgment or proof, with the names of the parties to the suit, and a description of the property thereby conveyed.

When the term of office of sheriff shall expire, &c., he shall deliver over writs of execution not executed to his successor.

SEC. 52. Whenever the term of office for which any sheriff shall have been elected has expired, or he shall have resigned, or removed without the county, or be removed from office, it shall be his duty to deliver over all writs of execution not executed to such person as may have been elected or appointed and qualified to discharge the duties of sheriff, and such new sheriff shall receive all such writs and proceed to execute the same in the same manner as if such writs had been originally directed to him; and for any failure or neglect to perform the duties therein imposed upon the former sheriff, such former sheriff and his securities shall be subject to the like penalties, proceedings and judgments as if he still continued in office.

Duty of new sheriff to execute them.

Former sheriff, &c., liable.

Sec. 53. When any sheriff shall die, it shall be the duty of his executors or administrators to deliver over to the person appointed or elected, and qualified, to succeed the deceased, all executions unexecuted; and for failure to do so, said executors or administrators, and the securities of the testator or intestate, shall be responsible.

In case of his death, his executors and administrators to deliver to his successor executions not executed.

Sec. 54. Every deed so executed and acknowledged, as in sections forty-nine, fifty and fifty-one specified or proved, shall be recorded as other conveyances of land; and thereafter, such deed or copy thereof, or of the record, certified by the recorder, shall be received as evidence in any court in this territory, without further proof of the execution thereof.

Sheriff's deeds to be recorded.

Copies to be evidence.

Sec. 55. When any officer shall have levied upon any goods and chattels, real estate, or other effects, by virtue of any execution, and the term of service of such officer shall expire and be determined before or after the sale thereof, and before the purchaser shall have obtained a deed therefor, duly executed, such officer shall, nevertheless, have power to do and perform all things in relation to such execution and the sale of such property, and in making, executing and acknowledging a deed to the purchaser, in the same manner and with the like effect, to all intents and purposes, as if his term of service had not expired; and he and his securities shall be subject to the like penalties, actions, proceedings and judgments, for neglect, misconduct or failure therein, as if he still continued in office.

Term of service of officer expiring after levy, he shall execute the writ, &c.

To execute and acknowledge deed, &c.

Sec. 56. When any officer shall die, or be removed from office, or be otherwise disqualified from acting, after having taken in execution any goods and chattels, real estate or other effects, and before sale thereof, the sheriff or coroner then in office shall proceed thereon, and do and perform all things remaining to be done and performed in relation to such execution and the sale of such property, and in making and executing deeds and conveyances therefor, in the same manner and with the like effect as the officer so deceased, removed from office, or disqualified, could have done.

Proceedings in case of death, resignation, or removal from office, after levy and before sale.

Sec. 57. When any officer shall die, be removed from office

If after sale, how

to proceed to obtain a deed.

or disqualified; or shall remove from this territory after the sale of any property, and before executing any conveyance therefor, the purchaser may petition the court out of which the execution issued, stating the facts ; and if he satisfy the court that the purchase money has been paid, the court shall order the sheriff then in office to execute and acknowledge a deed to the purchaser, reciting the facts, which deed shall be executed accordingly, and shall have the same effect, to all intents and purposes, as if made by the officer so deceased, removed from office, disqualified, or absent from the territory.

Officer refusing to levy, or to sell after levy, or make return, &c., or permit escape, liable for amount of execution.

Sec. 58. If any officer, to whom any execution shall be delivered, shall refuse or neglect to execute or levy the same according to law, or shall take in execution any property, or any property be delivered to him by any person against whom an execution is issued, and he shall neglect or refuse to make sale of the property so taken or delivered according to law, or shall make a false return of such writ, then, and in any of the cases aforesaid, such officer shall be liable and bound to pay the whole amount of money in such writ specified, or thereon endorsed, and directed to be levied ; and if such officer shall not, on the return of such writ, or at the time the same ought to be returned, have the money which he shall become liable to pay, as aforesaid, before the court, and pay the same according to the exigency of the writ, any person aggrieved thereby may have his action against such officer and his securities upon his official bond, or may have his remedy by action on the case against such officer in default.

Officer liable on his bond for refusal or neglect to perform duty to party aggrieved.

Sec. 59. If any officer, to whom any execution shall be delivered, shall not return such writ according to law and the command of the writ, such officer and his securities shall be liable to pay the damages sustained by such default, to be recovered by the party aggrieved by action upon the official bond of the officer, or by an action on the case against such officer.

Remedy of the plaintiff in certain cases against the officer.

Sec. 60. If any officer shall sell any property under any execution, whether he receive payment therefor or not, or shall make the money on any execution specified, or thereon endorsed and directed to be levied on any part thereof, and shall not have the amount of such sales, or the money so made before the court, and pay over the same according to law, he shall be liable to pay the whole amount of such sales or money by him made to the person entitled thereto, with lawful interest thereon, and damages in addition thereto, at the rate of five per cent. per month, to be computed from the time when the same shall be demanded by the party entitled thereto, or his attorney or agent, after the execution is returnable, until the whole be paid, to be recovered by action of debt against such officer and his securities on his official bond, or by action on the case against such officer; or the party aggrieved may proceed against such officer and his securities by motion in the court before which such writ is returnable, in a summary way, two days' previous notice being given of such intended motion, and the court shall render judgment for the amount which ought to have been paid, with interest and damages aforesaid, and award execution thereon forthwith; and it shall be the duty of every officer to whom any execution shall be delivered, issued upon any judgment recovered according to the provisions of this section, to execute the same within fifteen days after it shall be delivered to him, and he shall be subject to the like penalties and liabilities for any default therein as on other executions.

Persons injured may proceed against principal or securities, &c.

SEC. 61. Persons injured by the neglect or misfeasance of any officer may proceed against such principal, or any one or more of his securities, jointly or severally, in any proceeding authorized by law against such officer for neglect or injury.

Proceedings to set aside or quash execution.

Shall petition judge of the court from which it issued.

SEC. 62. If any person, against whom any execution shall be issued, apply to any judge of the court out of which the execution or order of sale may have been issued, by petition, verified by oath or affirmation, setting forth good cause why such execution ought to be stayed, set aside or quashed, reasonable notice of such intended application being previously given to the opposite party, his attorney or record, or agent, such judge shall thereupon hear the complaint.

If set aside or quashed, petitioner to enter into recognizance.

Its conditions.

Judge to order stay of execution, &c.

SEC. 63. If it appear that such execution ought to be stayed, set aside or quashed, and the petitioner enter into recognizance with sufficient securities in such sum as shall be reasonable, to be taken and approved by such judge, conditioned, that if such application finally be determined against such petitioner, he will pay the debt, damages and costs to be recovered by such execution or order of sale, or render in execution all his property liable to be seized and taken or sold by such writ or order of sale, or that the securities will do it for him, then such judge shall make an order for the stay of the execution or order of sale as aforesaid; but all the property, real and personal, bound by such execution or order of sale, shall remain bound as if no such stay had been granted.

Judge to return the petition to the court out of which the execution issued, &c.

SEC. 64. The judge shall return such petition and proceedings thereon, duly certified, to the court out of which the execution was issued, or order of sale is made returnable, and the clerk of such court shall enter the same upon his motion docket, and the court shall hear and determine the same in a summary way, according to right and justice, and may award a perpetual stay of such execution or order of sale, or may order the execution or order of sale to be enforced.

Leases for three years or more, subject to execution; not from justice's court.

Sec. 65. Every lease upon lands, for any unexpired term of three years or more, shall be subject to execution and sale as real property, and shall not be subject to sale upon and by virtue of an execution issued by a justice of the peace.

Construction of term "real estate."

Sec. 66. The term "real estate," as used in this act, shall be construed to include all estate and interest in lands, tenements and hereditaments.

Of the word "levy."

Sec. 67. The word "levy," as used in this act, shall be construed to mean the actual seizure of property by the officer charged with the execution of the writ.

This act to take effect and be in force from and after its passage.

CHAPTER 70.

EXEMPTION.

An Act to exempt certain property from execution and sale.

§ 1. Property exempt from execution and sale.
2. Exemption to continue for benefit of widow and family.
3. Release of exemption not valid, when.
4. What shall entitle property to exemption, &c.

§ 5. Property may be appraised; if more than exempted, may be divided.
6. Appraisers to certify to appraisal; duty of sheriff.
7. If surplus is not paid, property may be sold, &c. Proviso.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Property exempt from execution and sale.

Section 1. Every free white householder of this territory, male or female, being the head of a family, may own free from levy and sale by virtue of any judgment, order or decree of any court of law or equity in this territory, founded on any contract or any process emanating upon the same, any number of acres of land, including the dwelling-house and improvements: *Provided*, that the land together with the dwelling-house and improvements thus exempted shall not exceed in value the sum of seven hundred and fifty dollars.

Exemption to continue for benefit of widow family.

Sec. 2. Such exemption shall continue after the death of such householder, in case he be a married man, for the benefit of the widow and family, some one of them continuing to occupy such homestead until the youngest child becomes twenty-one years of age, and until the death of the widow.

Release of exemption not valid, when.

SEC. 3. No release or waiver of such exemption shall be valid, unless the same be in writing, subscribed by such householder, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged.

What shall entitle property to exemption, &c.

SEC. 4. To entitle any property to such exemption, the conveyance of the same shall show that it is assigned to be held as a homestead under this act; or, if already purchased, or the conveyance does not show such design, a notice that the same is designed to be so held shall be executed and acknowledged by the person owning said property, which shall contain a full description thereof, and shall be recorded in the office of the clerk of the probate court of the county in which the said property is situated, in a book to be provided for that purpose, and known as the homestead exemption book. But no property shall, by virtue of this act, be exempt from sale for non-payment of taxes or assessments, or for a debt contracted for the purchase thereof, or prior to the recording of the aforesaid deed or notice.

Property may be appraised; if more than should be exempt, may be divided.

SEC. 5. If, in the opinion of the sheriff holding an execution against such householder, the premises, claimed by him or her as exempted, are worth more than seven hundred and fifty dollars, he shall summon six qualified persons of his county, who shall, upon oath to be administered to them by such sheriff, appraise said premises; and if, in the opinion of the jury, the property may be divided without injury to the interests of the parties, they shall set off so much of said premises, including the dwelling-house, as in their opinion shall be worth seven hundred and fifty dollars, and the residue of said premises may be advertised and sold by such sheriff.

Appraisers to certify to their appraisal and deliver same to sheriff.

Duty of sheriff.

SEC. 6. In case the value of the premises shall, in the opinion of the jury, be more than seven hundred and fifty dollars, and cannot be divided as is provided for in the last section, they shall make and sign an appraisal of the value thereof, and deliver the same to the sheriff, who shall deliver a copy thereof to the execution debtor, or to some of his family of suitable age to understand the nature thereof, with a notice thereof attached, that, unless the execution debtor shall pay to said sheriff the surplus over and above seven hundred and fifty dollars, within sixty days thereafter, such premises will be sold.

If surplus is not paid, property may be sold, &c.

SEC. 7. In case such surplus shall not be paid within the said sixty days, it shall be lawful for the sheriff to advertise and sell the said premises, and out of the proceeds of such sale to pay

Proviso.

to such execution debtor the sum of seven hundred and fifty dollars, which shall be exempt from execution for one year thereafter, and apply the balance on such execution: *Provided*, that no sale shall be made unless a greater sum than seven hundred and fifty dollars shall be bid therefor, in which case the sheriff may return the execution for want of property.

This act to take effect and be in force from and after the first day of January, A. D. eighteen hundred and fifty-six.

CHAPTER 71.

FERRIES.

An Act regulating ferries.

§ 1. Not to be kept without a license.
2. Application for license, how made.
3. Tax not less than two dollars.
4. License to issue, when.
5. Bond to be given, conditions.
6. Rates of ferriage to be fixed by tribunal.
7. License may be granted in vacation.
8. To continue how long.
9. Good boats to be kept.
10. Penalty for neglect.
11. Ferriages to be paid or tendered.
12. List of rates to be put up.
13. Penalty for failure.
§ 14. Penalty for keeping a ferry without license.
15. Liable to action.
16. Penalties, how recovered.
17. Suit on bonds, when and how instituted
18. Limitation.
19. License may be revoked.
20. License may be granted free from tax.
21. Tribunal to fix rates, &c., license not granted, when.
22. Penalty on masters of boats for interference with rights of ferrymen.
23. Tax imposed by tribunal to be paid annually.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Not to be kept without license.

SECTION 1. No person shall keep a ferry, so as to demand pay thereat, without a license or other legal authority.

Application for license, how made, &c.

SEC. 2. Any person may petition the tribunal transacting county business of the county for license to keep a ferry, and if said tribunal believe such ferry necessary for the accommodation of the public, and that the petitioner is a suitable person to keep the same, it shall order the clerk to issue a license upon the payment of the tax assessed in such order; *provided*, that license shall not be granted to any ferry within the limits granted to any other ferry, previously, by legislative enactment.

Tax not less than two dollars.

SEC. 3. Such tax shall not be less than two dollars nor more than five hundred dollars, paid to the use of the county.

License to issue, when.

SEC. 4. Upon the production of the receipt of the collector of the county for the tax to such clerk, he shall issue a license to keep a ferry at the place therein mentioned for one year.

Sec. 5. Before the delivery of the license, such person shall give bond to the territory, with sufficient security, approved by such clerk, in such sum as the said tribunal shall order, conditioned for the faithful performance of the duties required by law at such ferry, which bond shall be filed in the office of such clerk.

Bond to be given; conditions.

Sec. 6. The tribunal aforesaid shall fix the rate of ferriage at each ferry, and may at any time alter the same, having regard to the breadth and situation of the stream and publicity of the ferry. No change in the rates of ferriage shall go into effect during the continuance of any license.

Rates of ferriage to be fixed by tribunal.

Sec. 7. The clerk of the tribunal aforesaid, in vacation, may grant ferry licenses, assess the tax and fix the rates for the same, and exercise all the powers of said tribunal touching the same.

License may be granted in vacation.

Sec. 8. Such license shall continue, until the end of the next term of said tribunal, and the tax shall be assessed in proportion to the time for which the license is granted; and in all other respects the clerk and collector shall proceed as upon licenses granted by the said tribunal.

To continue, how long.

Sec. 9. Every ferryman shall keep at his ferry a good boat or boats, in good repair, suitable to the wants, and sufficient hands to attend, on all occasions.

Good boats to be kept.

Sec. 10. Every ferryman failing to give such due attention, shall, for every offence, forfeit five dollars; and for failure to keep each boat in good repair, shall forfeit thirty dollars to the county where the ferry is situated, and he shall be liable for all damages that any person may sustain thereby, to be recovered in any action on the case in any court having jurisdiction.

Penalty for neglect.

Sec. 11. No ferryman shall be compelled to do any act, as such, before payment or tender of his fee be made, according to the rates of ferriage.

Ferriage to paid or tendered.

Sec. 12. Every ferryman shall keep a list of the legal rates of ferriage, printed or written in a legible hand, constantly posted up at some public place at the ferry or ferry house.

List of rates to be put up.

Sec. 13. If any ferryman fail to comply with the provisions of the preceding sections, he shall, for every such offence, forfeit four dollars to the county.

Penalty for failure.

Sec. 14. If any person demand or receive pay for services as ferryman without a license, he shall forfeit to the county twenty dollars for every day he shall keep such ferry, or be imprisoned not less than ten days nor more than thirty days, or be punished by both such fine and imprisonment, to be recovered by indictment in the court of the proper county.

Penalty for keeping ferry without license.

Sec. 15. Such ferries shall be further liable in an action on the case for all damages that may accrue to the person licensed to keep such ferry.

Liable to action.

Penalties, how recovered.

Sec. 16. Any penalties imposed by this act may be recoverable before any court having jurisdiction, in the name of the county.

Suit on bond, when and how instituted.

Sec. 17. Upon the failure of any ferryman to perform any duty required by this act, the attorney general or district attorney for the district shall commence and prosecute an action on the bond given by the ferryman, and the recovery of any penalty shall be no bar to any action on such bond.

Limitation.

Sec. 18. Every offence under this act shall be prosecuted within one year.

License may be revoked.

Sec. 19. If any ferryman fail to perform his duties, the said tribunal may at any time revoke his license.

License may be granted free from tax.

Sec. 20. If any such tribunal believe that any ferry in the county is so little used as not to justify the payment of license, they may, in their discretion, give to the keeper of such ferry a license without the payment of any tax.

Tribunal to fix rates, &c. License not granted, when.

Sec. 21. Such tribunal shall take bond and fix the rates as in other ferries, and no ferry shall be licensed on the same side of the river, and in the same county, within one mile of any ferry that shall there be already licensed.

Penalties on masters of boats for interference with the rights of ferrymen.

Sec. 22. If the master or commander of any steamboat shall land at the platform or known landing place of any public ferry, and shall intentionally obstruct the passage of any ferry boat, or moor or unload against, over or upon the same, without the consent of the owner of such ferry, such master or owner of such steamboat shall forfeit and pay to the legal possessor of such ferry landing fifty dollars for each offence, to be recovered by action of debt before a justice of the peace, and shall be liable to an action for damages, to be recovered before any court having competent jurisdiction.

Tax imposed by tribunal to be paid annually.

Sec. 23. Persons who have heretofore or may hereafter obtain from the legislature the privilege of keeping a ferry, shall pay annually to the clerk of the tribunal transacting county business such tax as said county tribunal may impose, not less than two dollars nor more than five hundred, for the use of the territory.

This act to take effect and be in force from and after its passage.

CHAPTER 72.

FORCIBLE ENTRY AND DETAINER.

An Act concerning forcible entries and detainers.

Article I. Of proceedings before justices of the peace.
II. Of writs of *certiorari* and appeals to the district court.

ARTICLE I.

Of proceedings before justices of the peace.

§ 1. Possession of lands, &c., only to be taken when entry is given by law, and then in a peaceable manner.
2. What acts deemed a forcible entry and detainer.
3. What acts deemed an unlawful detainer.
4. To what estates preceding sections shall extend.
5. Such actions cognizable before any justice of the peace.
6. Upon complaint in writing, justice to issue a summons.
7. Summons to be endorsed on, or annexed to, complaint. Form of summons.
8. Summons to be executed; when and how.
9. Precept for summoning a jury.
10. Form of precept.
11. Jurors challenged, or not attending, others to be summoned.
12. Summons and precept to be returned on the day of trial, &c.
13. Complainant failing to attend, shall be non-suited.
14. If defendant fails to appear, justice may proceed *ex parte*.
15. Oath to be administered to jurors. Form of oath.
16. Proceedings on the trial. Proof of lawful possession, &c., sufficient.
17. On verdict for complainant, damages to be assessed for waste, &c., and the rents and profits.
18. Verdict to be in writing and signed by the foreman. Form of verdict for defendant.
§ 19. Form of verdict for complainant.
20. No verdict to be set aside for informality, &c.
21. If verdict be for defendant, judgment for costs, &c., to be rendered.
22. If the verdict be for the complainant, judgment for restitution and costs to be rendered.
23. Execution to contain a clause of restitution. Form thereof.
24. What the justice shall enter in his docket.
25. Justice has power to grant a new trial, if applied for on the day on which the verdict was rendered, &c.
26. Merits of the title not to be inquired into.
27. This act not to extend to persons who have been in quiet possession, &c., three whole years, &c.
28. Power of justice to issue subpoenas. May compel attendance of witnesses, &c.
29. Depositions may be taken; how.
30. In what cases depositions may be read.
31. When persons residing on public lands may maintain the action. *Proviso.*
32. Quantity and extent of recovery.
33. When there is no legal survey, how the tract shall be surveyed, &c.
34. Execution returned unsatisfied, transcript to be filed.
35. Such judgment to be a lien on the real estate from the time of filing, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Section 1. No person shall enter upon or into any lands, tenements, or other possessions, and detain and hold the same,

"Possession of lands, &c , only to be taken when entry is given by law, &c.

but when entry is given by law, and then only in a peaceable manner.

What acts deemed a forcible entry and detainer.

Sec. 2. If any person shall enter upon or into any lands, tenements or other possessions, with force or strong hand, or with weapons, or breaking open the doors or windows, or other parts of a house, whether any person be in it or not, or by threatening to kill, maim, or beat the party in possession, or by such words or actions as have a natural tendency to excite fear or apprehension of danger, or by putting out of doors, or carrying away the goods of the party in possession, or by entering peaceably, and then turning out by force, or frightening by threats or other circumstances of terror the party out of possession, and detain and hold the same, in every such case the person so offending shall be deemed guilty of a forcible entry and detainer, within the meaning of this act. (*a*)

What acts deemed an unlawful detainer.

Sec. 3. When any person shall wilfully, and without force, hold over any lands, tenements, or other possessions, after the termination of the time for which they were demised or let to him, or the person under whom he claims; or when any person, wrongfully and without force, by disseizin, shall obtain and continue in possession of any lands, tenements or other possessions, and after demand made in writing for the deliverance of the possession thereof by the person having the legal right to such possession, his agent or attorney shall refuse or neglect to quit such possession, such person shall be deemed guilty of an unlawful detainer. (*b*)

What estates preceding sections shall extend to.

Sec. 4. The three preceding sections shall extend to and comprehend terms for years, and all estates whether freehold or less than freehold.

Such actions cognizable before any justice of the peace.

Sec. 5. Forcible entries and detainers, and forcible and unlawful detainers, shall be cognizable before any justice of the peace of the county in which they are committed. (*bb*)

Upon complaint in writing, justice to issue summons.

Sec. 6. When complaint to any justice of the peace for the proper county shall be made in writing, and signed by the party aggrieved, his agent or attorney, specifying the lands, tenements, or other possessions so forcibly entered and detained, or forcibly and unlawfully detained, and by whom, and when done, it shall be the duty of such justice to issue his summons, under his hand,

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(*a*) Moore vs. Agee, 7 Missouri Rep., 289.

(*b*) Blount & Baker vs. Winright, 7 Missouri Rep., 50; Hatfield vs. Wallace, 7 Missouri Rep., 113; Hoffstetler vs. Blatner, 8 Missouri Rep., 270.

(*bb*) A. brought an action of "Forcible entry and detainer" against B., in the township of C. On the trial, the jury being unable to agree were discharged, and the cause, on motion of A., was removed to another township in the same county: held, that there was no error in the removal of the case, as the jurisdiction of the justice was co-extensive with the county. Keim vs. Dougherty, 8 Missouri Rep., 498.

directed to the sheriff, or any constable of the county, commanding him to summon the person against whom the complaint shall have been made to appear before such justice, at a day in such summons to be specified.

Summons to be endorsed on or annexed to complaint.

SEC. 7. The summons shall be endorsed on or annexed to the complaint, and may be in the form following : "The territory of Kansas, to the sheriff (or constable of ——— township, as the case may be) of the county of ———, greeting: You are hereby commanded to summon E. F., of the county of ———, to appear before the undersigned, justice of the peace within and for said county, at ———, in the same county, on the ——— day of ———, at the hour of ten of the clock in the forenoon of that day, then and there to answer and defend against the complaint of G. H., of forcible entry and detainer, (or of unlawful detainer, as the case may be) made by the said E. F., upon the lands of the said G. H., as by the complaint of the said G. H. hereto annexed will more fully appear ; and have you then and there this writ, with the return of your proceedings thereon. Given under my hand, this ——— day of ——— , 18—.

Form of summons.

"A. B., justice of the peace."

When and how summons to be served.

SEC. 8. Such summons shall be executed at least five days before the return day thereof, either, *first*, by reading the complaint and summons to the defendant; or, *second*, by delivering him a copy of the complaint and summons; or, *third*, by leaving such copy at his usual place of abode, with some white member of his family, above the age of fifteen years, and explaining to such person the contents thereof. (1)

Precept for summoning a jury.

SEC. 9. The justice shall, at the same time, issue to the sheriff or constable a precept, commanding him to summon twelve good and lawful men, qualified to serve as jurors, to appear at the time and place appointed for the trial of said complaint, to be a jury in the cause.

Form of precept.

SEC. 10. The precept shall be in the form or to the effect following: "The territory of Kansas, to the sheriff (or constable of ——— township, as the case may be) of the county of ———, greeting: Whereas, complaint in writing is made to the undersigned, a justice of the peace within and for said county, of a certain forcible entry and detainer, (or unlawful detainer, as the case may be,) made by E. F., on the land of G. H., in the county aforesaid: These are, therefore, to command you, that you cause to come before the said justice, at ———, in the county aforesaid, on the ——— day of ———, at the hour of ——— of the clock, in the forenoon of that day, twelve good and lawful men, of the body of the county, to make a jury to inquire into the forcible entry and detainer, (or unlawful detainer) aforesaid. Given under my hand, this ——— day of ———, 18—.

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(1) A return that a copy was left at the "dwelling-house" of the party, "with his wife," and the same read to her is insufficient; the law will not presume that the dwelling-house of a party is his usual place of abode, nor that his wife was above the age of fifteen years; Ser vs. Bobst, 8 Missouri Rep., 506.

"A. B., justice of the peace."

Jurors challenged, or not attending, others to be summons.

Sec. 11. If a sufficient number of jurors fail to attend, or attending, are set aside by challenge, the justice may order the officer to complete the number.

Summons and precept to be returned on the day of trial, &c.

Sec. 12. The officer shall return to the justice the summons and precept, on the day assigned for the trial of the cause, and shall certify on the back of the summons how he has executed the same, and on the back of the precept a list of the jury summoned in obedience thereto.

Complainant failing to attend, shall be non-suited.

Sec. 13. If the complainant fail to attend at the time appointed for hearing the complaint, in person, by agent or attorney, and prosecute his suit, he shall be non-suited and the defendant shall recover his costs.

If defendant fails to appear, justice may proceed *ex parte.*

Sec. 14. If the defendant does not appear at the time appointed for hearing the complaint, the justice may proceed *ex parte*, or adjourn the court at his discretion; but he shall not adjourn for a longer time than ten days, nor to any other place than that assigned in the summons for the hearing of the cause.

Oath to be administered to jurors. Form of the oath.

Sec. 15. To each of the jurors who shall be returned to enquire of, and try the complaint, the justice shall administer the following oath or affirmation: "You do solemnly swear (or affirm) that you will well and truly try the forcible entry and detainer, (or unlawful detainer,) as in the complaint of G. H. alleged, and a true verdict give according to the evidence."

Proceedings on trial.

Sec. 16. When the jury is sworn, the justice shall cause the complaint to be read to them, and then call upon the complainant to support the same by proof; but the complainant shall not be compelled to make further proof of the forcible entry or detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered into and detained the same.

Proof of lawful possession, &c., sufficient.

On verdict for complainant, damages to be assessed for waste, &c, and the rents and profits.

Sec. 17. In all cases of a verdict for the complainant, damages shall be assessed as well for waste and injury committed upon the premises found to have been forcibly or unlawfully detained, as for the rents and profits during such detainer; and the verdict shall also contain a finding of the monthly value of the rents and profits of said premises.

Verdict to be in

Sec. 18. The verdict of the jury shall be in writing, and signed by the foreman only, and, if for the defendant, shall be in the form following: "We, the jury, find the defendant not guilty in the manner and form as charged in the complaint."

writing, and signed by the foreman. Form of verdict for defendant.

SEC. 19. If the verdict be for the complainant, it shall be in the following form: "We, the jury, find the defendant guilty in manner and form as charged in the complaint; and do further find that the complainant has sustained damages, by reason of the premises, to the value of —— dollars; and also, that the value of the monthly rents and profits of the said tenements is —— dollars.

Form of verdict for complainant.

SEC. 20. No verdict shall be set aside for informality, but the justice shall, in the presence of the jury, correct the same in matters of form, changing no matter of substance.

No verdict to be set aside for informality, &c.

SEC. 21. If the jury find the defendant not guilty, the justice shall record the verdict, and give judgment accordingly, and for costs; and shall issue execution therefor, in the ordinary form, against the goods and chattels of the complainant.

If verdict for defendant, judgment for costs, &c., to be rendered.

SEC. 22. If the verdict be for the complainant, the justice shall record the same, and the judgment shall be that the complainant have restitution of the premises found by the jury to have been forcibly or unlawfully detained, and recover of the defendant the sum of —— dollars, (double the sum assessed by the jury,) for his damages; and also at the rate of —— dollars, (double the sum found by the jury,) per month, for rents and profits from the — day of ——, 18—, (the day of rendering the verdict,) until restitution be made, together with costs.

If the verdict be for complainant, judgment of restitution and for costs to be rendered

SEC. 23. Executions against defendants shall contain a clause of restitution, and in other respects conform to the judgment, and may be in the following form: "The territory of Kansas, to the sheriff (or constable of —— township, as the case may be,) of the county of ——, greeting: Whereas, G. H., on the — day of ——, 18—, obtained judgment before the undersigned, justice of the peace for the county of ——, against E. F., that the said G. H. have restitution of (here insert a description of the premises, as in the complaint, if the verdict be for the whole, or as in the verdict, if it be for a part); and that he recover of the said E. F. the sum of —— dollars, for his damages; and also at the rate of —— dollars per month, for rents and profits, from the — day of ——, 18—, until restitution be made, together with costs: You are, therefore, commanded to take with you the power of the county, (c) if necessary, and to cause the said E. F. to be forthwith removed from the said premises, and the said G. H. to have peaceable possession thereof; and that of the goods

Execution to contain clause of restitution

Form thereof.

(c) See the act authorizing officers to call to their assistance the power of the county.

and chattels of the said E. F. you cause to be levied the damages, rents and profits, aforesaid, with the sum of —— dollars for costs, and —— for this writ, and your fees hereon; and that you return this writ, with your doings thereon, to the undersigned, within twenty days from the date hereof. Given under my hand, this — day of ——, 18—.

"A. B. justice of the peace."

What justice shall enter in his docket.

Sec. 24. The justice shall enter on his docket the names of the jurors, their verdict, and his judgment thereon.

Justice has power to grant a new trial, if applied for on the day in which the verdict is rendered, &c.

Sec. 25. In all cases under this act, the justice shall have power to grant a new trial, if the same be applied for on the day on which the verdict was rendered, and good cause be shown therefor; but not more than one new trial shall be granted to the same party.

Merits of the title not to be inquired into.

Sec. 26. The merits of the title shall in nowise be inquired into, on any complaint which shall be exhibited by virtue of this act. (*d*)

Not to extend to persons who have been in quiet possession, &c, three whole years, &c.

Sec. 27. This act shall not extend to any person who has had the uninterrupted occupation, or been in quiet possession, of any lands or tenements for the space of three whole years together immediately preceding the filing of the complaint or who has continued three whole years in the peaceable possession after the time for which the premises were demised or let to him, or those under whom he claims, shall have expired.

Power of justice to issue subpœnas. May compel attendance of witnesses, &c

Sec. 28. The justice shall have power to issue subpœnas for witnesses, on the application of either party; and if the witnesses summoned do not attend, the justice may issue an attachment to compel their attendance, and may continue the cause, at his discretion, not exceeding ten days.

Depositions may be taken, how.

Sec. 29. Depositions may be taken to be read on the trial of any such cause, in the same manner as in courts of record, (*e*) except that the commission for taking the testimony of non-resident witnesses shall be issued by the justice, and the depositions, when taken, shall be certified to the justice before whom the cause is pending.

In what cases depositions may be read.

Sec. 30. Every such deposition, taken and returned according to law, may be read, if competent and relevant, as evidence in the cause, *First*, if it appear to the satisfaction of the justice that the witness resides out of the county in which the trial is to be had; *Second*, if the witness be dead; *Third*, if by reason of age, sickness, or bodily infirmity, he is unable to attend the

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(*d*) Evidence concerning the right of property in the land in controversy, is inadmissible; Stone vs. Malot, 7 Missouri Rep., 158.

(*e*) See the act concerning depositions trial; *Fourth*, if he be gone out of the country without the collusion, privity or consent of the party offering his testimony.

When persons residing on public land may maintain the action.

Sec. 31. Every person who shall have a settlement or field on public land, and who shall reside on or be in possession of the same at the time of the forcible entry and detainer, or unlawful detainer, shall and may have the same remedy as is herein provided in such cases against any person who shall make such unlawful entry upon him: *Provided*, that any person having authority from the United States, or lawfully claiming under them, shall have power to enter into such land.

Proviso.

Quantity and extent of recovery.

Sec. 32. When any forcible entry and detainer, or unlawful detainer, shall be made upon any lands or other possessions, against the provisions of this act, the person having the lawful possession shall, against the wrong doer, be considered as entitled to such quantity, extent and limits of lands, as by the patent, grant, concession, deed, survey, donation, settlement or preemption right, such person, or those under whom he claims, can, by the laws of the United States, or of this territory, have, and lawfully claim, in and to such premises. (*ee*)

When there is no legal survey, how the tract shall be surveyed, &c.

Sec. 33. Where no legal survey has been made of such possession, the improvement of the person entitled to the possession shall be in the middle of the tract as near as may be, making the survey as near in a square as may be, not to interfere with any established survey or line, or any conditional line agreed upon by the adjoining proprietors or possessors.

Execution unsatisfied, transcript to be filed.

Sec. 34. If any execution, issued by the justice under this act, shall be returned unsatisfied, the party entitled to satisfaction may file a transcript of the judgment, execution and return, certified by the justice, in the office of the clerk of the court of the county to which an appeal would lie.

Such judgment to be a lien upon the real estate from the time of filing, &c.

Sec. 35. Such judgment, from the time of filing the transcript, shall have the same lien on the lands and tenements of the party as a judgment rendered in the appellate court, and the clerk may issue execution thereon, against the goods and chattels, lands and tenements of the party, which shall be proceeded in, in like manner, and with like effect, as in cases of executions on judgments of a court of record.

(*ee*) *Vide* Sloane vs. Moore, 7 Missouri Rep., 170.

ARTICLE II.

Of writs of certiorari and appeals to the district court.

§ 1. Proceedings may be moved to the district court by *certiorari*.
2. When *certiorari* shall be allowed.
3. Requisites of the affidavit, when made by complainant.
4. Complainant to enter into recognisance, condition thereof.
5. Requisites of affidavit, when made by defendant.
6. Recognizance to be entered into by the defendant; condition thereof.
7. Recognizance to be under hand and seal of principal and security.
8. When the justice shall stay proceedings, and certify the same to the circuit court.
9. Justice to proceed to final judgment, when.
10. Appeal allowed, and when.
11. Must be applied for, and affidavit and recognizance filed, within ten days after judgment.
12. When the appeal shall be returnable.
13. Affidavit to be made, and what the same shall state.
14. If complainant be appellant, condition of recognizance, &c.
15. If defendant be appellant, condition of recognizance, &c.
16. Recognizance to be under the hand and seal of the principal and securities; form thereof.
17. If complainant be appellant, form of condition.
18. If defendant be appellant, form of condition.
19. When execution may be issued, not to be levied till ten days expire, except, &c.
§ 20. In what cases it may be levied before the time expires for taking an appeal.
21. When appeal is perfected, execution to be stayed, &c.
22. And justice shall certify transcript.
23. Appellant shall cause transcript to be filed, when.
24. Failing to file it, judgment shall be affirmed, unless, &c.
25. Duty of clerk of the district court.
26. When cause shall be set for trial.
27. Cause shall not be dismissed for informality, &c.
28. Court may order a new recognizance, when.
29. If appellant has filed insufficient affidavit, &c., and fails to perfect them, &c., his suit shall be dismissed.
30. And judgment rendered accordingly.
31. Dismissal shall be certified to the justice, &c.
32. Judgment by default, what it shall express, &c.
33. Court to hear and determine anew causes removed by *certiorari* or appeal.
34. Appellate court may compel justices to allow appeals, and to perfect returns.
35. No appeal allowed to supreme court, or *supersedeas* awarded, unless condition of recognizance be in substance what is prescribed by this act.
36. Supreme and courts of record may issue writs of restitution, &c.
37. Duties of officer having charge of such writs.

Proceedings may be removed by *certiorari*.

SECTION 1. The proceedings under this act may be removed into the court of the county by appeal or *certiorari*, to be issued by the clerks, and served on the justice at any time before the day of the trial to which an appeal would lie. (*f*)

When *certiorari* shall be allowed.

SEC. 2. No *certiorari* shall be issued unless application be made therefor before the day of trial, nor unless the applicant file with the clerk a copy of the complaint, and also an affidavit and recognizance.

Requisites of the affidavit when made by the plaintiff.

SEC. 3. If the application be on behalf of the complainant, the affidavit shall be made by himself, or some credible person for

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(*f*) The proceedings may be removed to the district court, by *certiorari*, at any time before the day appointed by the justice for the hearing of the cause, whether that day be the one named in the summons, or a day to which the trial is adjourned. Kincaid & Forbes vs. Mitchell, 6 Missouri Rep., 223.

him, and shall state that the affiant verily believes that the complainant is justly entitled to recover the possession of the premises described in the complaint.

Complainant to enter into recognizance.

SEC. 4. In such case, the complainant, or some responsible person for him, as principal, with one or more sureties, to be approved by the clerk, shall enter into a recognizance to the defendant, in a sum sufficient to secure the payment of all costs, conditioned that the complainant shall prosecute his suit with effect and without delay, pay all costs that may be adjudged against him, and otherwise abide the judgment of the appellate court.

Condition thereof.

Requisites of affidavit, when made by defendant.

SEC. 5. If the application be on behalf of the defendant, the affidavit shall be made by himself, or some credible person for him, and shall state that the affiant verily believes that the complainant is not entitled to recover possession of the premises described in the complaint.

Recognizance to be entered into by defendant.

SEC. 6. In such case, the defendant, or some responsible person for him, as principal, with one or more sureties, to be approved by the clerk, shall enter into a recognizance to the complainant, in a sum sufficient to secure the payment of all rents and profits, damages and costs, conditioned that the defendant will not commit or suffer any waste or damage to be committed on the premises sued for, and that he will pay all rents and profits, damages and costs, that may be adjudged against him, and otherwise abide the judgment of the appellate court.

Condition thereof.

Recognizance to be under hand and seal of principal and security.

SEC. 7. Every recognizance to be entered into on application for a *certiorari* shall be under the hand and seal of his principal and his surety, and the clerk shall endorse thereon his approval of the same.

When the justice shall stay proceedings and certify the same to the court.

SEC. 8. When a *certiorari* shall be served on the justice before the day of the trial, and not otherwise, he shall stay all further proceedings, and certify to the appellate court of the county a complete transcript of his docket, and all proceedings had before him, together with the original papers filed in the cause, and file the same in the office of the clerk of the appellate court within ten days after the service of the *certiorari*.

Justice to proceed to final judgment, when.

SEC. 9. In all cases which shall not be removed before the day of the trial, the justice shall proceed to final judgment as is provided by law.

Appeal allowed, when.

SEC. 10. Any party aggrieved by the judgment of a justice of the peace, in any case of forcible entry and detainer, or unlawful detainer, (except a judgment of non-suit,) may appeal therefrom to the court to which appeal would lie from a justice of the peace.

Must be applied for, and affidavit and recognizance filed, within ten days after judgment.

Sec. 11. No appeal shall be allowed in any case unless the same be applied for, and an affidavit and recognizance filed with the justice, within ten days after the rendition of the judgment and before the return day of the appeal, although such return day be within ten days after the rendition of the judgment.

When the appeal shall be returnable.

Sec. 12. When the judgment of the justice is rendered during the vacation of the appellate court, the appeal shall be returnable to the first day of the next term thereof; but if the judgment be rendered during the term of such court, the appeal shall be returnable within six days after the rendition of the judgment.

Affidavit to be made and what the same shall state.

Sec. 13. The affidavit shall be made by the appellant, or some credible person for him, and shall state that the affiant verily believes that the appellant is aggrieved by the judgment of the justice, and that he does not take the appeal for vexation or delay, but that justice may be done.

If complainant be appellant, condition of recognizance, &c.

Sec. 14. If the complainant be the appellant, he, or some responsible person for him, as principal, with one or more sureties, to be approved by the justice, shall enter into a recognizance to the defendant, in a sum sufficient to secure the payment of all costs, conditioned that the appellant shall prosecute his appeal with effect and without delay, pay all costs that may be adjudged against him, and otherwise abide the judgment of the appellate court.

If defendant be appellant, condition of recognizance, &c.

Sec. 15. If the defendant be the appellant, he, or some responsible person for him, with one or more sureties, to be approved by the justice, shall enter into a recognizance to the complainant, in a sum sufficient to secure the payment of all damages, rents and profits, and costs, that are or may be adjudged against him, conditioned that the appellant shall prosecute his appeal with effect and without delay; that he will not commit, or suffer to be committed, any waste or damage on the premises whereof restitution is adjudged, and that he will pay all damages, rents and profits, and costs, that may be adjudged against him, and otherwise abide the final judgment in the cause.

Recognizance to be under the hand and seal, &c.

Form thereof.

Sec. 16. Such recognizance shall be under the hand and seal of the principal and surety, and attested by the justice, and may be in the following form: "We, C. D., as principal, and E. F., surety, acknowledge ourselves indebted to G. H., (the complainant or defendant, as the case may be,) in the sum of —— dollars, upon this condition: That whereas, H. I. has appealed from the judgment of J. K., a justice of the peace, in an action of forcible entry and detainer, (or unlawful detainer, as the case may be,) between G. H., complainant, and H. I., defendant." (Here insert one or the other of the following conditions, as the case may require.)

If complainant be appellant, form of condition.

SEC. 17. If the appeal be taken by the complainant, the condition may be as follows: "Now, if the said ——, (the complainant,) shall prosecute his appeal with effect and without delay, pay all costs that may be adjudged against him, and otherwise abide the judgment of the appellate court in said cause, this recognizance shall be void. Given under our hands and seals, this —— day of ——, 18—.

"C. D. (SEAL.)
"Attest: "E. F. (SEAL.)
J. K., justice of the peace."

If defendant be appellant, form of condition.

SEC. 18. If the appeal be taken by the defendant, the condition of the recognizance may be as follows: "Now, if the said ——, (the defendant,) shall prosecute his appeal with effect and without delay, neither commit or suffer to be committed any waste or damage on the premises, whereof restitution is adjudged, and pay all rents and profits, damages and costs, that be adjudged against him, and otherwise abide the judgment of the appellate court in said cause, then this recognizance to be void. Given under our hands and seals, this —— day of ——, 18—.

"C. D. (SEAL.)
"Attest: "E. F. (SEAL.)
J. K., justice of the peace."

When execution may be issued; not to be levied till ten days expire except, &c.

SEC. 19. The justice rendering judgment in any such cause, may issue execution at any time after judgment; but such execution shall not be levied until after the expiration of the time allowed for the taking an appeal, except as in the next succeeding section is provided.

In what cases it may be levied before time expires for taking an appeal.

SEC. 20. If it shall appear to the officer having charge of the execution that the defendant therein is about to remove, conceal, or dispose of his property, so as to hinder or delay the levy, the rents and profits, damages and costs, may be levied before the expiration of the time allowed for taking an appeal.

When appeal is perfected, execution to be stayed, &c.

SEC. 21. When an appeal is perfected, the justice shall note the same on his docket, and thereupon all further proceedings on the judgment shall be stayed, and the execution, if any, shall be returned upon notice of the appeal being served on the officer having charge thereof.

And justice shall certify transcript.

SEC. 22. The justice shall, immediately after an appeal is perfected in any such cause before him, make out and certify a transcript of his docket, and all the proceedings in the cause.

Appellant shall cause transcript to be filed, when.

SEC. 23. The appellant shall cause to be filed, in the office of the clerk of the appellate court of the county, such certified transcript of the record and proceedings before the justice, together with the original affidavit, recognizance, and other original papers in the cause, on or before the return day of the appeal. (*g*)

Failing to file it, judgment shall be affirmed, unless, &c.

SEC. 24. If the appellant fail to file such transcript and other papers on or before the return day of the appeal, the appellee may produce such transcript and papers, and the court shall affirm the judgment unless the appellant shall show good cause for his default. (*g*)

Duty of the clerk of the appellate court.

SEC. 25. The clerk shall file in his office all such transcripts and papers in causes removed into the appellate court, by *certiorari* or appeal, and docket such causes for trial.

When cause shall be set for trial.

SEC. 26. If such transcript and papers be filed in vacation, the cause shall be set for trial on some day during the next term; if in term time, then on some day during the same term, unless, for good cause shown, the court shall otherwise direct.

Cause shall not be dismissed for informality, &c., if appellant will rectify the same.

SEC. 27. No cause removed into the appellate court, by *certiorari* or appeal, shall be dismissed for any informality, insufficiency or imperfection in the affidavit or recognizance, if a sufficient affidavit or recognizance be filed within such time as shall not delay the other party.

Court may order new recognizance, when.

SEC. 28. The appellate court may in any case where it shall appear that the amount or security in a recognizance is insufficient, or for any other substantial defect, order a new recognizance to be filed within such time as shall not delay the trial.

If appellant has filed insufficient affidavit, &c., and fails to perfect them, &c., his suit shall be dismissed.

SEC. 29. In all cases where the complainant shall have removed the cause by *certiorari* or appeal, and shall not have filed a sufficient affidavit or recognizance, and shall fail to perfect the same according to the order of the court, or shall have failed to file any affidavit or recognizance within the time required by law, or shall not prosecute his suit or appeal, the same shall be dismissed.

And judgment rendered accordingly.

SEC. 30. In case of such default by a defendant suing a *certiorari*, judgment may be rendered against him by default; or in case of appeal, if he be appellant, the judgment of the justice may be affirmed, or the appeal dismissed.

Shall be certified to the justice, &c.

SEC. 31. When an appeal shall be dismissed, such dismissal shall be certified to the justice, who shall thereupon issue execution without delay.

Judgment by de-

SEC. 32. In case of a judgment by default, a jury, or the

(*g*) These two sections contain the substance of the 27th section of the act of January 28, 1839; and the supreme court says that it is the duty of the appellant himself to file the transcript of the justice's proceedings on or before the return day of the appeal, and his failure to do so gives the appellee the right to produce the transcript, and have the judgment of the justice affirmed; Keim vs. Dougherty, 8 Missouri Rep., 498: and where the judgment is thus affirmed, a writ of restitution may be issued from the circuit court; *ibid.*

court (if no jury be required), shall assess the monthly value of the premises and the damages, and judgment shall be rendered on the verdict accordingly.

fault, what it shall express, &c.

SEC. 33. When a cause shall be removed into the appellate court by *certiorari* or appeal, such court shall proceed to hear, try and determine the same anew, as if it had originated in such court, without regarding any error, defect or informality in the proceedings of the justice.

Appellate court to hear and determine anew causes removed by *certiorari* or appeal.

SEC. 34. The appellate court may compel any justice to allow an appeal when improperly refused, to make returns on appeal or *certiorari*, and to perfect such returns when imperfect, in the same manner, and by the like process and proceedings, as in cases of appeals in civil actions.

Appellate court may compel justices to allow appeals and to perfect returns.

SEC. 35. No appeal to the supreme court shall operate as a stay of execution, nor shall any *supersedeas* be awarded to the party in possession, unless the condition of the recognizance contain the substance of the condition prescribed by this act, in cases of appeals by a defendant, and the penalty and security be sufficient to secure the performance thereof.

No appeal allowed to supreme court or *supersedeas* awarded unless condition of recognizance be in substance, &c.

SEC. 36. The supreme and inferior courts of record, respectively, shall have power to issue writs of restitution, or re-restitution, or executions with clauses to that effect, as occasion may require, to enforce their judgments, in all cases arising under this act.

Supreme and inferior courts may issue writs of restitution, &c.

SEC. 37. The officer having charge of a writ of restitution or re-restitution, or execution with a clause to that effect, shall have power to expel and remove from the premises mentioned the defendant therein named, his servants, and others under his control, and all other persons who shall have entered thereon, after the commencement of the suit, otherwise than by process of law, and to deliver to the plaintiff possession thereof.

Duties of officer having charge of such writs.

This act to take effect and be in force from and after its passage.

CHAPTER 73

FRAUDULENT CONVEYANCES.

An Act concerning fraudulent conveyances.

§ 1. Deed of gift, &c., void as to creditors and purchasers, when.
§ 2. Conveyance of land, &c., with intent to delay, hinder or defraud creditors, utterly void.

§ 3. Qualification of preceding section as to subsequent purchasers.
4. Gift of goods, chattels, &c., not for consideration deemed valuable, void as to creditors and purchasers, when.
5. Loans after five years' possession, &c., declared void as to creditors and purchasers, unless the loan, reservation, &c., was declared by will, or deed in writing, &c.
6. Conveyance not valid until delivered for record, and not then if made with intent to defraud, &c.
§ 7. Not to extend to *bona fide* conveyances or subsequent *bona fide* purchasers.
8. Mortgage or deed of trust to personal property not valid, unless delivered and the deed recorded.
9. Preceding section not to defeat contracts of bottomry, respondentia, &c.
10. Every sale of goods and chattels declared to be void without a change of possession, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Deed of gift, &c., void as to creditors and purchasers, when.

SECTION 1. Every deed of gift and conveyance of goods and chattels, in trust, to the use of the person so making such deed of gift or conveyance, is declared to be void as against creditors, existing and subsequent, and purchasers.

Conveyance of land, &c., with intent to delay, hinder, or defraud creditors, void.

SEC. 2. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods and chattels, or in things in action, or of any rents and profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, and every bond, suit, judgment, decree, or execution, made or contrived with the intent to to hinder, delay or defraud creditors of their lawful actions, damages, forfeitures, debts or demands, (or to defraud or deceive those who shall purchase the same lands, tenements or hereditaments, or any rent, profit or commodity issuing of them,) shall be from henceforth deemed and taken as against said creditors and purchasers, prior and subsequent, to be clearly and utterly void. (*a*)

(*a*) A debtor may prefer one creditor to another, and may transfer his property to one, and leave the other wholly unpaid. Sibley vs. Hood, 3 Missouri Rep., 290; Bell vs. Thompson, 3 Missouri Rep., 84. A general assignment, to a trustee, without a schedule of the property conveyed, or of the creditors provided for, will be good and effectual. Deaver vs. Savage et al., 3 Missouri Rep., 252. If A purchase of B, for a valuable consideration, to secure himself, his purchase will be good, although he knew at the time that B was greatly indebted and in insolvent circumstances. Sibley vs. Hood, 3 Missouri Rep., 290. To impeach a voluntary conveyance as fraudulent, it must be shown that the grantor was largely indebted at the time the conveyance was made. Baker vs. Welch, 4 Missouri Rep., 484. A deed of assignment by a debtor, giving a preference to some creditors, and directing the balance to be distributed rateably among the remaining creditors, provided they will execute a release, is fraudulent and void. Swearingen vs. Slicer, 5 Missouri Rep., 241; Brown vs. Knox, Boggs & Knox, 6 Missouri Rep., 302; Drake vs. Rogers et al., 6 Missouri Rep., 317; Crow & Tevis vs. Ruby, 5 Missouri Rep., 484. The validity of a deed of assignment cannot be questioned by those creditors who voluntarily become parties, although it may be void as to other creditors. Burrows & Jennings vs. Alter, 7 Missouri Rep., 424. The assent of creditors to a deed of assignment will, in general, be presumed. Duvall et al. vs. Raisin et al., 7 Missouri Rep., 449. Endorsers are viewed as creditors, and an assignment for their security is valid, though no payment has been made by them. *Ibid.* The want of a schedule does not invalidate a deed of assignment. *Ibid.* One impeaching a conveyance on the ground of fraud, must show his right to do so. Wright vs. Crockett, 7 Missouri Rep., 125.

Qualification of preceding section as to subsequent purchasers.

SEC. 3. No such conveyance or charge shall be deemed void, in favor of a subsequent purchaser, if the deed or conveyance shall have been duly acknowledged, or proved and recorded, or the purchaser have actual notice thereof at the time of the payment of the purchase money, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge, was party or privy to the fraud intended.

Gifts of goods, chattels, slaves, &c., not for consideration deemed valuable, void as to creditors and purchasers, when.

SEC. 4. Every gift of goods, chattels and slaves, and all other conveyances of the same, not for a consideration deemed valuable in law, shall be void as against all creditors and purchasers, unless possession shall really and *bona fide* accompany such gift or conveyance, or unless the same be, by will, duly proved and recorded, or by deed in writing acknowledged or proved, and recorded in the county in which the donor or grantor resides, (if he does not reside in this territory, then in the county in which the property is,) in such manner as conveyances of lands are, by law, directed to be acknowledged or proven, and recorded. (*b*)

Loans, after five years' possession, &c., declared void as to creditors and purchasers, unless the loan, reservation, &c., was declared by will, or deed in writing, &c.

SEC. 5. When any goods or chattels, or slaves, shall be pretended to have been loaned to any person, with whom, or those claiming under him, possession shall have remained for the space of five years, without demand made, and pursued by due process of law, on the part of the pretended lender; or when any reservation or limitation shall be pretended to have been made of any use of property by way of condition, reservation, or remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another, the same shall be taken, as to all creditors and purchasers of the person so remaining in possession, to be void, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property was declared, by will or deed in writing, proved or acknowledged, and recorded as required by the preceding section. (*c*)

Conveyance not valid until deliver-

SEC. 6. No conveyance, required by either of the two preced-

(*b*) Deeds for lands must be recorded in the county in which they are situate. If a donor of chattels resides in one county, and the chattels are in another, in what county must the deeds be recorded? The alteration made removes all doubt about this matter. If the vendor or mortgagor remains in possession of chattels after sale or mortgage, it is not fraud *per se*, but is a circumstance to be left to the jury, who, from all the evidence, will determine whether the transaction be fraudulent or not; Shepherd vs. Trigg, 7 Missouri Rep., 151; Ross vs. Crutsinger, *ibid*, 245: overruling the cases of Rochblave vs. Potter, 1 Missouri Rep., 561; Foster et al. vs. Wallace, 2 Missouri Rep., 231; Sibley vs. Hood, 3 Missouri Rep., 290; King vs. Bailey, 6 Missouri Rep., 576. A purchaser from a person not a party to a conveyance, but having only the possession of the property in right of another, and not deriving title under the conveyance, is not embraced within this section; Allison vs. Bowles, 8 Missouri Rep., 346.

(*c*) A loan, under this section, though void, after five years' possession, against the creditors and purchasers of the person remaining in possession, is, nevertheless, valid between the parties thereto; Smoot vs. Wathen, administrator, &c., 8 Missouri Rep., 522.

ed for record, and not then if made with intent to defraud, &c.

ing sections to be recorded, shall be valid or binding, except between the parties and their legal representatives, until the same shall have been deposited in the recorder's office for record ; and, even then, if made with intent to defraud prior creditors or purchasers, shall be void against such creditors and purchasers.

Not to extend to *bona fide* conveyances, or subsequent *bona fide* purchasers.

Sec. 7. This act shall not extend to any estate or interest in any lands, tenements or hereditaments, goods or chattels, or any rents, profits or commons out of the same, which shall be upon valuable consideration, and *bona fide* and lawfully conveyed; nor shall it be construed to avoid any deed as against any subsequent *bona fide* purchaser from the grantee, for valuable consideration, and without any notice of fraud.

Mortgage or deed of trust to personal property, not valid unless delivered or deed recorded.

Sec. 8. No mortgage or deed of trust of personal property hereafter made shall be valid against any other person than the parties thereto, unless possession of the mortgaged or trust property be delivered to, and retained by, the mortgagee or trustee, or *cestui que* trust, or unless the mortgage or deed of trust be acknowledged or proved, and recorded in the county in which the mortgagor or grantor resides, in such manner as conveyances of lands are by law directed to be acknowledged or proved and recorded.

Preceding section not to be construed to defeat contracts of bottomry, &c.

Sec. 9. Nothing contained in the preceding section shall avoid or defeat any contract of bottomry, respondentia, nor any transfer or assignment or hypothecation of any boat, vessel, ship or goods, at sea or abroad, if the mortgagee, trustee, or *cestui que* trust, shall take possession of such boat, vessel, ship or goods, as soon as may be after the arrival thereof within this territory. (*d*)

Every sale of goods and chattels declared to be void, without a change of possession, &c. Rev. Code of New York.

Sec. 10. Every sale made by a vendor of goods and chattels in his possession or under his control, unless the same be accompanied by delivery in a reasonable time, (regard being had to the situation of the property,) and be followed by an actual and continued change of the possession of the things sold, shall be presumed to be fraudulent and void, as against the creditors of the vendor or subsequent purchasers in good faith, and shall be conclusive evidence of fraud, unless it shall be made to appear to the jury, on the part of the persons claiming under such sale, that the same was made in good faith, and without any intent to defraud creditors or subsequent purchasers.

This act to take effect and be in force from and after its passage.

(*d*) 2 Kent, in note, p. 526, and see the same book, p. 530, in note.

CHAPTER 74.

FREEDOM.

An Act to enable persons held in slavery to sue for their freedom.

§ 1. Persons held in slavery permitted to sue for their freedom.
2. If the petition contains sufficient matter to authorize suit, what orders the court shall make.
3. Orders to be endorsed on petition, &c.
4. In case of restraint, &c., or severe treatment, court or judge to cause the petitioner to be brought up by warrant.
5. Warrant for that purpose to be directed to sheriff; what it shall contain.
6. How and where to be executed.
7. Petitioner brought before court or judge, person in whose possession he was found to enter into recognizance; condition thereof.
§ 8. Failing to enter into recognizance, petitioner to be hired out. Bond to be taken; condition of the bond.
9. Form of the action to be commenced.
10. The declaration, and what averment it shall contain.
11. How and what defendant may plead.
12. Plaintiff required to prove his freedom, when.
13. Judgment of liberation, &c.
14. Plaintiff shall not recover damages.
15. Appeal or writ of error allowed.
16. Sheriff to collect proceeds of hire of petitioner, and loan them out at interest. To take bond and security, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Persons held in slavery permitted to sue.

SECTION 1. Any person held in slavery may petition the district court, or judge thereof in vacation, for leave to sue, as a poor person, in order to establish his right to freedom, and shall state in his petition the ground on which his claim to freedom is founded.

If petition contains sufficient matter to authorize suit, what orders the judge or court shall make.

SEC. 2. If, in the opinion of the court or judge, the petition contains sufficient matter to authorize the commencement of a suit, the court or judge shall make the following orders: *First*, that the petitioner be allowed to sue, on giving security, satisfactorily, to the clerk, for all costs that may be adjudged against him or her; *Second*, an order that such person have reasonable liberty to attend his counsel and the court, as occasion may require; that he be not removed out of the jurisdiction of the court, and that he be not subject to any severity on account of his application for freedom.

To be endorsed on petition, &c.

SEC. 3. Both orders shall be endorsed on the petition, and a copy of them endorsed upon the writ and served therewith, and in the same manner.

In case of restraint, &c., or severe treatment, court or judge to cause the petitioner to be brought up by warrant.

SEC. 4. If the court or judge is satisfied at the time of presenting the petition, or at any time during the pendency of the suit, that the petitioner has been or is about to be restrained by any person of the reasonable liberty of attending his counsel and the court, or is about to be removed out of the jurisdiction of the court, or that he has been or is about to be subjected to any severity on account of his application for freedom, the court or judge shall cause the petitioner to be brought up by a warrant, under the seal of the court or hand of the judge.

Warrant for that purpose to be directed to sheriff; what it shall contain.

SEC. 5. The warrant may be directed to the sheriff of any county, and shall command the officer to seize the petitioner wherever he may be found, and bring him before the court or judge, and to summon the person in whose possession he is found to appear before the court or judge, on a day and at a place therein specified.

How and where to be executed.

SEC. 6. The warrant may be executed, by the officer to whom it is directed, in any county in the territory.

Petitioner brought before court or judge, person in whose possession he was found to enter into recognizance.

SEC. 7. When the petitioner is brought before the court or judge, the person in whose possession he is found, or his agent, shall enter into a recognizance to the territory of Kansas, with sufficient securities, conditioned that the petitioner shall, during the pendency of the suit, have reasonable liberty of attending his counsel and the court; that he shall not be removed out of the jurisdiction of the court where the suit is to be brought, or is pending, and that he shall not be subjected to any severity on account of his application for freedom, which recognizance shall be filed in the court, and be a record thereof.

Condition thereof.

Failing to enter into recognizance, petitioner to be hired out.

SEC. 8. If the person, or his agent, fail to enter into the recognizance, the court or judge shall make an order that the sheriff take possession of the petitioner and hire him out to the best advantage, from time to time, during the pendency of the suit, and take a bond from the hirer, payable to the territory of Kansas, in such penalty as the court or judge shall in the order direct, and with such security as the sheriff approves, conditioned as in the recognizance of the defendant, and further conditioned that the hirer will pay the hire to the sheriff, and return the petitioner at the expiration of the term for which he is hired, or as soon as the action is determined.

Bond to be taken; condition thereof.

Form of the action to be commenced.

SEC. 9. The action to be brought under the leave given shall be an action of trespass for false imprisonment, and shall be instituted in the name of the petitioner against the person holding him in slavery or claiming him as a slave.

The declaration, and what averments it shall contain.

SEC. 10. The declaration shall be in the common form of a declaration for false imprisonment, and shall contain an averment that the plaintiff, before and at the time of committing the grievance, was, and still is, a free person, and that the defendant held, and still holds, him in slavery.

How and what defendant may plead.

SEC. 11. The defendant may plead as in other like cases, or he may plead the general issue and give any special matter in evidence.

Sec. 12. If the plaintiff be a negro or mulatto, he is required to prove his right to freedom.

Plaintiff required to prove his freedom, when.

Sec. 13. If the plaintiff's right to freedom be established, judgment of liberation shall be given in his favor against the defendant, and all persons claiming under him, by title derived after the commencement of the suit.

Judgment of liberation, &c.

Sec. 14. In actions prosecuted under this act, the plaintiff shall not recover any damages.

Plaintiff shall not recover damages.

Sec. 15. Either party to the suit may have a writ of error, or appeal to the supreme court; and an appeal or writ of error taken by the plaintiff shall operate as a *supersedeas*, without any recognizance.

Appeal or writ of error allowed, &c.

Sec. 16. If the sheriff hire out a person suing for his freedom, as provided in the eighth section of this act, he shall collect the proceeds of such hire, and, from time to time, loan out the same at an interest not less than six nor more than ten per centum per annum, and take from the loanee a bond or note, with security, for the payment of the principal sum and interest; and when the suit is ended, such sheriff shall deliver such bond or note to the person entitled to the same.

Sheriff to collect proceeds of hire of petitioner, and loan them out at interest.

To take bond and security, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 75.

FUGITIVES FROM OTHER STATES OR TERRITORIES.

An Act relative to fugitives from other territories or states.

§ 1. Upon demand regularly made, governor to issue his warrant. To whom directed.
2. What shall be set forth in the warrant.
3. Where and how warrant to be executed. Power and duty of the person to whom it is directed.
4. Officer may confine person in jail, when. Keeper to receive him, &c.
5. Expenses to be paid out of the territorial treasury.
6. Person charged on oath of another, fleeing from another state for crime, warrant to issue.
7. On examination, the party charged may be committed to jail or bailed.
§ 8. Proceedings on examination. Copy of examination to be sent to the governor.
9. Duty of governor.
10. Offender to be delivered up on demand.
11. If at large on bail, sheriff authorized to take him.
12. Circuit court may discharge or detain accused, when.
13. Not to be kept in prison, &c., beyond the end of second term after arrest.
14. Recognizance, if forfeited, shall enure to the territory.
15. Bond and security for costs to be taken from the prosecutor.

§ 16. Costs may be collected by fee-bills. Duty of sheriff, &c.
17. If not paid execution to issue, when.
18. Clerk may sue on bond for the recovery of costs and charges.
19. Warrant to arrest fugitives from service from other states, when to issue. Command of warrant.
20. What proof shall entitle a person to such warrant.
21. Such warrant, how executed.
22. Court or magistrate how to proceed when such fugitive is brought before them.
23. Persons charged may be discharged, when.
24. If a runaway slave, he shall be committed to jail, &c.
§ 25. If person charged is discharged, remedy against claimant.
26. Proceedings, if it appear that claimant is entitled to the services of the fugitive. Certificate to be granted, form thereof.
27. Authority of claimant under the certificate.
28. No person to remove fugitive from this territory, unless by the provisions of this act.
29. Penalty for violating preceding section.
30. Fees and expenses, how paid in proceedings against fugitives from service, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Upon demand regularly made, governor to issue his warrant.

To whom directed.

Section 1. Whenever the executive of any other state or territory shall demand of the executive of this territory any person as a fugitive from justice, and shall have complied with the requisites of the act of congress in that case made and provided, (*a*) it shall be the duty of the executive of this territory to issue his warrant, under the seal of the territory, (*b*) directed to any sheriff, coroner, or other person whom he may think fit to entrust with the execution of such warrant.

What shall be set forth in the warrant.

Sec. 2. The warrant shall authorize the officer or person to whom it is directed to arrest the fugitive anywhere within the limits of this territory and convey him to any place therein named, and shall command all sheriffs, coroners, constables, and other officers to whom the warrant may be shown, to aid and assist in the execution thereof.

Where and how warrant to be executed.

Power and duty of officer, &c.

Sec. 3. Every warrant so issued may be executed in any part of the territory, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested by virtue thereof, as sheriffs and other officers by law have in the execution of civil or criminal process directed to them, with like penalties on those who refuse their assistance.

Officer may confine prisoner in jail, when.

Sec. 4. The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass in conveying such prisoner to the place commanded in the warrant, and the keeper of

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(*a*) *Vide*, Act of Congress, February 12, 1793, and the act of 1850, known as the fugitive slave law.

(*b*) *Vide*, Vallad vs. Sheriff of St. Louis county, 2 Missouri Rep., 24.

such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route.

Keeper to receive him, &c.

SEC. 5. The expenses which may accrue under the foregoing sections of this act, being first ascertained to the satisfaction of the executive, shall, on his certificate, be allowed and paid out of the territorial treasury.

Expenses to be paid out of the territorial treasury.

SEC. 6. Whenever any person within this territory shall be charged, on the oath or affirmation of any credible witness, before any judge or justice of a court of record, or a justice of the peace, with the commission of any crime in any other state or territory of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged.

Person charged, on the oath of another, of fleeing from another state for crime, warrant to issue.

SEC. 7. If, upon examination, it shall appear to the judge or justice that the person charged is guilty of the crime alleged, he shall commit him to the jail of the county; or, if the offence is bailable, take bail for his appearance at the next term of the district court in the county.

On examination, the party charged may be committed to jail, or bailed.

SEC. 8. The judge or justice shall proceed in the examination in the same manner as is required when a person is brought before such officer charged with an offence against the laws of this territory, and shall reduce the examination to writing and make return thereof as in other cases, and shall, also, send a copy of the examination and proceedings to the governor of this territory without delay.

Proceedings on examination.

Copy of examination, &c., to be sent to the governor.

SEC. 9. If, in the opinion of the governor, the examination contains sufficient evidence to warrant the finding an indictment, he shall forthwith notify the executive of the state or territory in which the crime is alleged to have been committed of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of an indictment to accompany the demand.

Duty of governor.

SEC. 10. When a demand shall be made for the offender, the governor shall forthwith issue his warrant, under the seal of the territory, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the territory.

Offender to be delivered up on demand.

SEC. 11. If the accused shall be at large, on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the territory, and to surrender him agreeably to the command of the warrant.

If at large on bail, sheriff authorized to take him.

SEC. 12. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recog-

Circuit court may discharge or detain accused, when.

nizance, and he shall not have been demanded, the district court may discharge the cognizance or continue it, according to the circumstances of the case, such as distance of the place where the offence is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

Not to be kept in prison, &c.

SEC. 13. In no case shall the party be kept in prison or held to bail beyond the end of the second term of the district court after the arrest; and if no demand is made for him within that time, he shall be discharged.

Recognizance shall enure to the territory.

SEC. 14. When any such recognizance shall be forfeited, it shall enure to the benefit of the territory.

Security for costs to be taken from the prosecutor.

SEC. 15. When a complaint shall be made against any person, as provided by this act, the judge or justice shall take from the prosecutor a bond to the clerk of the district court, with sufficient security, to secure the payment of the costs and expenses which may accrue by occasion of the arrest and detention of the party charged, which bond shall be certified and returned with the examination to the office of the clerk of the district court.

Costs may be collected by fee-bills; duty of sheriff, &c.

SEC. 16. Upon the determination of the proceedings in that court, the clerk may issue fee-bills, which shall be served on the principal and securities in the bond by the sheriff, in the same manner as other fee-bills; for which service the sheriff shall be allowed the same fees as for serving notices.

If not paid, execution to issue, when.

SEC. 17. If the costs and charges are not paid on or before the first day of the next term of the district court, nor any cause shown why they should not be paid, the clerk may issue execution for the same against the parties on whom the fee-bills were served.

Clerk may sue on bond for recovery of costs and charges.

SEC. 18. Nothing in the two preceding sections shall be construed to prevent the clerk from instituting suit on such bond, for the recovery of the costs and charges.

Warrant to arrest fugitive from service from other states, when to issue.

SEC. 19. Whenever any person legally held to labor or service, in any state or territory of the United States, shall escape into this territory, the person entitled to the services of such fugitive, or the agent of such person duly authorized by him, upon making due proof of such title to any court of record, or any judge or justice thereof, or a justice of the peace, shall be entitled to a warrant, directed to the sheriff of the county where such justice shall be, commanding him to take the body of such fugitive, and have him before the court or magistrate issuing the warrant, on a day to be therein specified.

Command of warrant

What proof shall entitle person to such warrant.

SEC. 20. The proof to entitle any person to such warrant shall be by affidavit, setting forth, particularly, the ground of such claim to the services of such fugitive, the time of escape, and where he then is.

Sec. 21. The officer to whom such warrant shall be directed and delivered shall execute the same by arresting and taking the body of such fugitive, and bring him before the court or magistrate before whom such writ shall be returnable.

Such warrant, how executed.

Sec. 22. The court or magistrate shall proceed to hear the allegations and proofs of the parties, and shall, if required, allow a reasonable time to either party to procure further necessary proof, and in such case may commit such fugitive to the custody of the sheriff of the county for safe-keeping, or may take bond to the claimant in such penalty as shall be deemed reasonable with sufficient securities, conditioned that such fugitive shall appear before the court or magistrate at a time and place therein specified, to abide the order and decision of the court or magistrate in relation to the claim.

Court or magistrate, how to proceed when such fugitive is brought before them.

Sec. 23. If, upon the hearing of the parties and witnesses, the court or magistrate shall be satisfied that the claimant is not entitled to the service of such person, he shall be discharged, except in the case hereinafter next mentioned.

Person charged may be discharged, when.

Sec. 24. If it appear that the person so arrested and brought before the court or magistrate, is a runaway slave, not the property of the claimant, the court or magistrate shall commit such slave to the jail of the county, there to be dealt with in all respects as by law is provided in cases of runaway slaves.

If a runaway slave, he shall be committed to jail, &c.

Sec. 25. When any person is discharged by the court or magistrate, the person at whose instance he was arrested shall pay him one hundred dollars, the costs and expenses incurred by him, and all damages he may have sustained.

If person charged is discharged, remedy against claimant.

Sec. 26. If it shall appear that the claimant is entitled to the services of such fugitive, the court or magistrate before whom such hearing shall be had shall grant to the claimant a certificate, stating that it satisfactorily appears that such fugitive (who shall be particularly described in the certificate by his name, age, and personal appearance) doth owe service or labor to the claimant, (naming such person and his place of residence,) and thereby allowing such person or his agent (to be also named in the certificate) to take such fugitive and convey him to the place of residence of the person entitled to his labor or service, and such fugitive shall thereupon be delivered to such claimant or to his agent duly appointed for that purpose.

Proceedings, if it appear that claimant is entitled to the services of the fugitive.

Certificate to be granted.

Form thereof.

Sec. 27. Such certificate shall authorize the claimant, or his agent therein named, to remove such fugitive, without any unnecessary delay, through and out of the territory, to the place of residence of the claimant.

Authority of claimant, &c.

Sec. 28. No person shall take or remove any such fugitive

No person to remove fugitive, unless authorized.

from this territory, or do any act towards such removal, unless authorized so to do pursuant to the provisions of this act.

Penalty for violating preceding section.

SEC. 29. Every person violating the provisions of the last preceding section, shall forfeit and pay five hundred dollars to the aggrieved party.

Fees and expenses, how paid, in proceedings against fugitives from service, &c.

SEC. 30. The fees and expenses incurred in proceedings herein authorized against any fugitive from labor or service, shall be paid by the person at whose instance the proceedings are instituted, before any warrant shall issue or other service rendered for which a fee is chargeable, except that, when such fugitive is committed as a runaway slave, the costs of commitment and detainer shall be paid in the same manner as like expenses under the law concerning runaway slaves.

This act to take effect and be in force from and after its passage.

CHAPTER 76.

GAMING.

An Act concerning gaming.

§ 1. Money or property lost at gaming may be recovered, &c.
2. How the plaintiff shall declare in an action for the recovery.
3. Heirs, &c., may have the remedy.
4. Judgments, conveyances, bonds, &c., founded on gaming consideration, declared to be void.
5. Assignments of such bonds, &c., shall not affect the defence.
6. If minor or appretice lose money in a grocery or dram-shop, parent, master, &c., may recover the same.
§ 7. Defence, how pleaded, &c.
8. In suits before justices, defendant may be called on to answer, &c.
9. Answer not evidence on indictment.
10. Betting on elections declared gaming.
11. Stake holder liable to the party who placed the money in his hands. Delivery to winner, no defence.
12. Action to be commenced within three months.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Money or property lost at gaming, may be recovered, &c.

SECTION 1. Any person who shall lose any money or property at any game (*a*) or gambling device, may recover the same by action of debt, if money; if property, by action of trover, replevin or detinue.

(*a*) Horse-racing is a game within the meaning of this act; Shropshire vs. Glascock & Garner, 4 Missouri Rep., 536; Boynton vs. Curle, 4 *ibid.*, 599. Betting on the presidential election is not; Stapleton vs. Benson, 8 Missouri Rep., 13; Tompkins, J., dissenting.

SEC. 2. In such action it shall be sufficient for the plaintiff to declare generally, as in action of debt for money had and received by the defendant to the plaintiff's use, or as in actions of detinue or trover, upon a supposed finding, and the detaining or converting the property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiff, according to the form of this act, without setting forth the special matter.

How the plaintiff shall declare in an action for the recovery.

SEC. 3. The heirs, executors, administrators and creditors of the person losing may have the same remedy against the winner as is provided in the preceding section.

Heirs, &c., may have the remedy.

SEC. 4. All judgments, conveyances, bonds, bills, notes and securities, when the consideration is money or property won at any game or gambling device, shall be void, and may be set aside and vacated by any court of equity upon bill filed for that purpose by the person so granting, giving, entering into, or executing the same, or by his executors or administrators, or by any creditor, heir, devisee, purchaser or other person interested therein. (*b*)

Judgments, conveyances, bonds, &c., founded on gaming consideration, declared void, &c.

SEC. 5. The assignment of any bond, bill, note, judgment, conveyance, or other security, shall not affect the defence of the person executing the same.

Assignments of such bonds, &c., shall not affect the defence.

SEC. 6. If any minor or apprentice shall lose any money or property in any grocery or dram-shop, by betting at cards, or any other gambling device, or by any bet, wager or hazard whatever, the parent or guardian of such minor, or the master of such apprentice, may sue for and recover from the keeper of such grocery or dram-shop, such money or property, or the full value thereof, so lost by such minor or apprentice.

If minor or apprentice lose money in a grocery or dram shop, parent, &c., may recover the same.

SEC. 7. Any matter of defence under this act may be specially pleaded, or given in evidence under the general issue.

Defence, how pleaded, &c.

SEC. 8. In all suits under this act, before a justice of the peace, the plaintiff may call in the defendant to answer on oath any interrogatory touching the case; and if the defendant refuse to answer, the same shall be taken as confessed.

In suits before justices, defendant may be called to answer, &c.

SEC. 9. Such answer shall not be admitted as evidence against such person in any proceeding by indictment.

Answer not evidence on indictment.

SEC. 10. Bets and wagers on any election authorized by the constitution and laws of this territory, are gaming within the meaning of this act.

Betting on elections, gaming.

SEC. 11. Every stakeholder who shall knowingly receive any money or property, staked upon any betting declared gaming by the provisions of this act, shall be liable to the party who placed

Stakeholder liable to the party who placed money in his hands.

(*b*) *Vide,* Waddle vs. Loper, 1 Missouri Rep., 635; Collins vs. Lee & Parker, 2 *ibid.,* 16; Wilkerson vs. Whitney, 7 Missouri Rep., 295.

Delivery to winner no defence.

such money or property in his hands, both before and after the termination of such bet; and the delivery of the money to the winner shall be no defence to any action brought by the losing party for the recovery thereof: *Provided*, that no stakeholder shall be liable afterwards, unless a demand has been made of such stakeholder of the money or property in his possession previous to the expiration of the time agreed upon by the parties for the determination of the bet or wager.

Action to be commenced within three months.

Sec. 12. Any action for money or property, brought under this act, shall be commenced within three months from the time the right of action accrued, and not afterwards.

This act to take effect and be in force from and after its passage.

CHAPTER 77.

GAMING.

An Act to prevent the sale of intoxicating liquors and games of chance within one mile of the Shawnee Manual Labor School, in the territory of Kansas.

§ 1. No intoxicating liquor of any kind shall be sold.
2. No games of chance shall be played.
§ 3. Penalty prescribed.
4. Information and prosecution.

Whereas, the legislative assembly of the territory of Kansas is now convened at the Shawnee Manual Labor School, by and through the kindness of Reverend Thomas Johnson, and said place being the property of the Methodist Episcopal church south, and designed as a place for the religious as well as literary training of youth, a proper respect for the generous principal of this school, and for the church of God, requires at our hands some action for the government of this body consistent with the relations we hold with the above; therefore,

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

No intoxicating liquor shall be sold.

Section 1. That from and after the passage of this act no intoxicating liquor, of any kind whatever, shall be sold within one mile of the Shawnee Manual Labor School during the sitting of this present legislative assembly, to wit, until after the first day of September next.

No games of

Sec. 2. That no games of chance, of any kind whatsoever, with cards, dice, or other things, shall be played within the limits aforesaid.

chance shall be played.

SEC. 3. That any person or persons who shall be found guilty of selling, or offering for sale, any intoxicating liquors, as aforesaid, or who shall be found guilty of playing at cards, dice, or other thing, for money or stake of any kind whatsoever, shall, upon conviction thereof before the judge of the second judicial district of the territory of Kansas, be fined not exceeding fifty dollars, or imprisoned not more than sixty days, at the discretion of the said court.

Penalty prescribed.

Fine, $50.

SEC. 4. That upon information under oath or affirmation to the said judge of the court aforesaid, that any person or persons has or have been guilty of violating any of the provisions of this act, the said judge shall forthwith issue a warrant of arrest directed to the marshal of the said territory, who shall bring the person or persons before the said judge immediately, if he or they be found within this territory; and if the judge aforesaid shall find that the person or persons is or are guilty of violating the provisions of this act, after a fair and impartial trial (by jury, if the offender or offenders desire it), he shall thereupon proceed to pronounce the penalty provided by this act.

Information.

Prosecution.

CHAPTER 78.

GUARDIANS AND CURATORS.

An Act concerning guardians and curators.

ARTICLE I.—Appointment of guardians and curators; their duties and responsibilities.

II.—Proceedings on removal of property of non-resident wards.

ARTICLE I.

Appointment of guardians and curators, their duties and responsibilities.

§ 1. Who shall be natural guardian of children, &c.

2. When court shall appoint a guardian. Minors over fourteen years to choose their own guardians.

3. Officers having knowledge of a minor without a guardian, shall report to the court; the court shall appoint a guardian.

§ 4. Court to notify minor over the age of fourteen to appear and choose a guardian, when.

5. Court shall approve the choice of such guardian, when, &c.

6. When a minor is entitled to an estate not derived from parent, and parent is incompetent or mismanaging it, court shall appoint a curator, when, &c.

§ 7. Court may appoint a curator of the estate, different from the guardian, &c., when. Guardians and curators to prosecute and defend suits, &c.
8. Minors, on attaining the age of fourteen, may choose another guardian, &c.
9. If guardian, &c., so chosen or appointed, reside in a different county, &c., court may order removal of proceedings.
10. Court to order transcript of all proceedings to be delivered to last appointed guardian or curator, when. Jurisdiction of court, &c., in such case.
11. What appointment of guardian shall specify.
12. Powers of guardian.
13. Married woman shall not be guardian or curator; marriage shall operate as a revocation of her appointment.
14. Non-resident not to be guardian or curator; removal from the territory a revocation.
15. No clerk or judge of probate court shall be guardian, &c.
16. Minor shall not be committed to guardianship of person of different religion from his parents.
17. Guardians and curators to be twenty-one years of age; shall give bond; condition thereof.
18. Duty of guardians and curators to make an inventory, &c.
19. Estate to be appraised.
20. What estate shall not be appraised.
§ 21. Proceedings in case of embezzling minor's property.
22. Court to order the proper education of minors; may make appropriations, &c.
23. Money of minors to be loaned out, how; if it cannot be loaned, guardian and curator responsible for the principal, &c.; interest, when payable, &c.
24. Guardians and curators to make annual settlements; how made and conducted; on failure, liable to be attached, &c.
25. Receipts, &c., given by guardians and curators, valid.
26. Minors without sufficient estate, &c., to be bound apprentices, &c.
27. When wards die, leaving an estate, duty of probate court.
28. Curators of wards living out of this territory to make settlement with the guardians of said wards.
29. Minors shall acknowledge satisfaction of record, when; court may enter discharge, when.
30. Duration of office of guardian and curator. To continue until ward is of age.
31. Guardian, &c., may resign, or be removed.
32. Testamentary guardian may be appointed.
33. Failing to accept of the guardianship, &c., court may appoint a guardian.
34. Compensation of guardians and curators.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who shall be natural guardian of children, &c.

Section 1. In all cases, not otherwise provided for by law, the father, while living, and after his death, and when there shall be no lawful father, then the mother, if living, shall be the natural guardian of their children, and have the custody and care of their persons, education and estates; and when such estate is not derived from the parent acting as guardian, such parent shall give security, and account as other guardians.

When court shall appoint guardian.

Minors over the age of 14 years, to choose their own guardians.

Sec. 2. If a minor have no parents living, or the parents be adjudged, according to law, incompetent or unfit for the duties of guardian, the probate courts, in their respective counties, shall appoint guardians to such minors under the age of fourteen years, and admit those over that age to choose guardians for themselves, subject to the approval of the court.

Officers having knowledge of a minor without a guardian shall report to the court.

Sec. 3. Whenever any judge of a probate court, justice of the peace, sheriff, or constable, shall have knowledge that there is, within his county, any minor without any legal or natural guardian, he shall communicate the fact, with the name and usual residence of the minor, by a report in writing, to the probate court, and the court shall thereupon proceed to appoint a guardian as directed in the preceding section.

Court to notify minor over the age of 14 to appear and choose a guardian, when.

Sec. 4. Whenever it shall appear to the probate court, that a minor over the age of fourteen has no guardian, the court shall issue notice to such minor to appear before them, at a stated time, to choose a guardian, or that one will be appointed; and if such minor, on due notice, shall neglect or refuse to appear, or to choose a guardian after appearing, the court shall appoint one according to law, as if such minor were under the age of fourteen years.

Court shall approve the choice of such guardian, when.

Sec. 5. If such minor appears and makes choice of a guardian, and the court is satisfied that the person chosen is suitable and competent, the appointment shall be made accordingly; but if the choice shall not be approved by the court, they shall appoint some competent and suitable person to be guardian, in the same manner as if the minor was under the age of fourteen years.

When minor is entitled to an estate not derived from parent, and parent is incompetent, or mismanages it, court shall appoint a curator, &c.

Sec. 6. When a minor shall be entitled to, or possessed of, any estate not derived from the parent who shall be the natural guardian at the time, and it shall be suggested to the court that such parent is incompetent to the care of such estate, or is mismanaging or wasting the same, the court may issue a notice to such parent to appear before them at a stated time, to show cause why a curator should not be appointed or chosen; and if, on due notice, no sufficient cause be shown, the court shall appoint a curator for the management of such estate for the minor, if under fourteen years of age, or, if over that age, admit the minor to choose one in the same manner, and subject to the same restrictions, as above provided for the choice or appointment of guardians for minors over that age.

Court may appoint a curator of the estate, different from the guardian, &c., when.

Sec. 7. Whenever the court shall be satisfied that it will be for the advantage of minors to appoint a curator of the estate different from the guardian of the person, it shall be lawful to make such separate appointment for minors under fourteen years of age, and to allow those over that age to make such separate choice, subject to the approval of the court as heretofore directed; and all guardians and curators shall be allowed to prosecute and defend for the minors, in all matters committed to the care of such guardians and curators, respectively, without further admittance in the several courts of this territory.

Guardians and curators to prosecute and defend suits, &c.

Minors on attaining the age of 14, may choose another guardian, &c.

Sec. 8. A minor, having a guardian or curator appointed by the court, upon attaining the age of fourteen years may choose another guardian or curator, before the proper court in the county of the minor's residence; and, if the court is satisfied that the person chosen is suitable and competent, the appointment shall be made accordingly.

If guardian, &c., so chosen or appointed, reside in different county, &c., court may order removal of proceedings.

Sec. 9. If the guardian or curator, so chosen or appointed, reside in a county different from that in which the former appointment was made, the court may, on being satisfied that it will not be injurious to the interest of the minor, order a removal of the proceedings to the county in which the guardian or curator so chosen shall reside.

Court to order transcript of all proceedings to be delivered to last appointed guardian or curator, when.

Sec. 10. On presenting a copy of such order to the court in which the proceedings of the former guardianship or curatorship shall be, that court shall order a transcript of all the proceedings, and all the money, property, evidences of rights and titles, of which the latter guardian or curator is entitled to the possession, to be delivered to him or her, and the receipt of such latter guardian or curator shall be a sufficient voucher for so much to the former one in the settlement of his or her accounts. The court to which such removal shall be made shall take jurisdiction of the case, place the said transcript of record, and proceed to the final settlement of the case, as if the appointment or choice had been made before them.

Jurisdiction of court, &c.

What appointment of guardian shall specify.

Sec. 11. Every appointment of a guardian shall specify whether it be of the person of his ward, or of his person and estate.

Powers of a guardian.

Sec. 12. The guardian of the person, whether natural or legal, shall be entitled to the charge, custody and control of the person of his ward, and the care of his education, support and maintenance; the curator shall have the care and management of the estate of the minor, subject to the superintending control of the court; and the guardian of the person and estate of the minor shall have all the powers, and perform all the duties, both of a guardian of the person and a curator.

Married woman shall not be guardian or curator; marriage shall operate as a revocation of her appointment.

Sec. 13. No married woman shall be a guardian or curator of the estate of a minor; and if any woman, after her appointment, marry, the marriage shall operate as a revocation of her appointment; but a married woman may be guardian of the person of a minor, and marriage, after appointment, shall not operate as a revocation thereof.

Non-resident not to be guardian or curator. Removal from this territory a revocation.

Sec. 14. No person, other than a resident of this territory, shall be appointed a guardian or curator; and if, after his appointment, any guardian or curator remove from this territory, his appointment shall be revoked, and proceedings had as in other cases of revocation.

No clerk or judge of probate court

Sec. 15. No clerk or judge of probate court shall be appointed a guardian, in the county where he resides, during his continuance in office.

Shall be guardian, &c.

SEC. 16. A minor shall not be committed to the guardianship of a person of religious persuasion different from that of the parents, or of the surviving parent of the minor, if another suitable person can be procured, unless the minor, being of proper age, should so choose.

Minor shall not be committed to guardianship of person of different religion from his parents.

SEC. 17. All guardians and curators appointed by the courts, or chosen by the minors under the sanction of the courts, shall be twenty-one years of age, and shall, respectively, before entering on the duties of their office, give bond with security, to be approved by the court before which they shall be appointed, to the territory of Kansas, for the use of the minors respectively, in double the value of the estate or interest to be committed to their care, conditioned for the faithful discharge of their duties according to law; and the court shall have power to order them to give supplemental security for the same causes, in the same manner, and with like effect, as is authorized by law in the case of administrators, and in default thereof, or for other good cause, to remove them, and appoint or admit the choice of others in their stead. (*b*)

Guardians and curators to be 21 years of age; shall give bond.

Condition thereof.

SEC. 18. It shall be the duty of every curator of an estate, and of every guardian of the person and estate of a minor, to make a true inventory of all the real estate, and of all the goods, chattels, rights and credits of the ward, that shall come to his possession or knowledge, and to return the same to the proper court at the first term after any such estate shall come to his possession or knowledge.

Duty of guardians and curators to make an inventory, &c.

SEC. 19. Upon taking any inventory required by the preceding section, the personal estate and effects comprised therein, (except as in the next section is provided,) shall be appraised in like manner as is required in respect to the inventory of the personal estate of a deceased testator or intestate.

Estate to be appraised.

SEC. 20. When any personal estate shall have been received from an executor or administrator, and shall have been appraised, it shall not be necessary for the guardian or curator to cause the same to be appraised again, but he shall state, in his inventory of such estate, the appraised value as it appears on the inventory of the executor or administrator, and be held to account accordingly.

What estate shall not be appraised.

SEC. 21. Upon complaint made on oath to any probate court having jurisdiction, by any guardian, curator or ward, or by any creditor or other person interested in expectancy, reversion or

Proceedings in case of embezzling minor's property.

(*b*) Devoe, guardian, vs. Pitman, 3 Missouri Rep., 130.

otherwise, against any person within the county suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects of the ward, the court may cite and examine such suspected person, and proceed, as to such charge, in the same manner as is provided by law respecting persons suspected of concealing or embezzling the effects of a testator or intestate.

Court to order the proper education of minors; may make appropriations, &c.

SEC. 22. The probate court shall order the proper education of minors, according to their means; and for that purpose may, from time to time, make the necessary appropriations of the money or the personal estate of any minor; and when the personal estate shall be insufficient, or not applicable to the object, the court may order the lease or sale of real estate, or so much thereof as may be requisite, or that the same be mortgaged for not less than two-thirds of its real value, to raise the funds necessary to complete the education of such minor.

Money of minors to be loaned out; if it cannot be loaned, guardian and curator responsible for the principal, &c.

Interest, when payable, &c.

SEC. 23. Guardians and curators shall put the money of minors entrusted to their care to interest upon mortgage, or other sufficient security, for all sums under five hundred dollars, to be approved by the court, or they may, with leave of the court, and the assent of the securities, retain the money in their hands, paying interest therefor; but if no person be found to take the money upon interest, and the guardian or curator should not choose to retain the same, paying interest, then they shall be liable for the principal only, until the same can be put to interest. The interest, in such cases, shall be payable annually; and, if not then paid, shall become part of the principal, and bear interest as such, without the necessity of a new mortgage or security, unless the court should deem such additional security to be proper. Guardians and curators shall loan the money of minors at the highest rate of interest that can be obtained, not exceeding ten per cent. per annum, and shall account for all interest received, which shall be charged in their annual settlements.

Guardians and curators to make annual settlements.

How made and conducted.

SEC. 24. Guardians and curators shall make annual settlements of their accounts with the probate court in which their proceedings shall be, beginning at the first term after the end of a year from their appointment or admission, respectively, and at each corresponding annual term, as nearly as may be, until their final settlement, and shall give the same notice required of executors and administrators, of their settlements; and in such settlements, guardians having the care of the education of minors shall make a statement, on oath, of the application of all moneys directed by the court to be applied by them to the education of their wards. Guardians and curators neglecting or refusing to make such settlements and statements on oath, as are herein required, shall be liable to be attached and imprisoned until they make such settlements and statements, the court first making a rule on them, respectively, to show cause why they should not be so proceeded against.

On failure, liable to be attached, &c.

SEC. 25. Discharges, acquittances, and receipts given by guardians and curators, during the continuance of their respective offices, for any debts, rents, or other money or property, due to minors under their care, shall be valid in favor of all persons who take them, without fraud on their part, against such minors and their representatives; but the guardians and curators, and their securities, shall be liable to such minors, if such discharges, acquittances, or receipts be given illegally, or for fraudulent purposes.

Receipts, &c., given by guardians and curators, valid.

SEC. 26. Minors having no estate sufficient for their maintenance and education, shall be liable to be bound apprentices by their guardians so appointed or chosen, in such manner as is provided by the law respecting apprentices; and no indentures of apprenticeship shall be affected by the minor exercising the right of choosing a guardian or curator during the term of the apprenticeship; but such minor shall be allowed all reasonable time and opportunity to exercise such right.

Minors without sufficient estate, &c., to be bound apprentices, &c.

SEC. 27. Whenever a minor, having a guardian, dies possessed of property, real or personal, no letters of administration shall be granted on such estate; but the probate court shall proceed to distribute the personal estate among those interested, by ordering the same to be paid over by the guardian to the distributees.

Where wards die, leaving an estate, duty of court.

SEC. 28. Whenever it shall be made to appear to the probate court, that any minor is not a resident of this territory, and has a guardian in another territory or state, the court may authorize or compel the curator of such minor to deliver over to such guardian all the property, of which he may have the custody, belonging to such minor, and make a full and perfect settlement of his curatorship with such guardian, and the receipt of such guardian shall fully discharge such curator, and his securities, from all liability on account of the property so delivered to such guardian.

Curators of wards living out of this territory, to make settlement with the guardians of said wards.

SEC. 29. Minors, having received all money and other estate due from their guardians or curators, on the expiration of the guardianship or curatorship, shall acknowledge satisfaction of record in the proper court; or, if such minor, on due notice, neglect or refuse to make such acknowledgment, or cannot be found in the county to be served with notice, the court shall enter a dis-

Minors shall acknowledge satisfaction of record, when.

Court may enter discharge, when.

charge of such guardians or curators on the record, and give them a certificate therefor.

Duration of office of guardian and curator.

Sec. 30. Every guardian or curator shall continue in office, unless sooner discharged according to law, until the ward, if a male, shall arrive at the age of twenty-one years, and if a female, until her marriage, or arrival at the age of twenty-one years, whichever shall first happen.

May resign or be removed.

Sec. 31. Any guardian or curator may resign his trust, or be removed from office, for like causes, in like manner, and with like effect, as in the case of an executor or administrator.

Testamentary guardian may be appointed.

Sec. 32. The lawful father of any minor, under the age of twenty-one years, may, by last will, appoint a guardian of the person of such minor, who, if he accept, shall give bond and security, and be in all things upon the same footing as guardians appointed by the court, or chosen by the minor, except that the minor shall not be allowed to choose another guardian upon arriving at the age of fourteen years, unless the testamentary guardian declines to serve longer, and notify the court thereof.

Failing to accept, &c., court may appoint a guardian.

Sec. 33. If any testamentary guardian shall fail to notify the proper court of his acceptance of the guardianship, and give bond and security within six months after the probate of the will, the court may appoint a guardian as if no appointment had been made by the testator.

Compensation of guardians and curators.

Sec. 34. The probate courts shall allow guardians and curators such compensation as they may deem fit and reasonable.

ARTICLE II.

Proceedings on removal of property of non-resident wards.

§ 1. Where guardian and ward are both non-residents, and the ward has property in this territory, such guardian, on producing satisfactory proof, &c., may demand, or sue for, and remove the same.

§ 2. On evidence produced of his appointment, bond, &c., the court may authorize the delivery of his ward's property to such non-resident guardian. Resident guardian to be discharged. Proviso.

When guardian and ward are both non-residents, and ward has property in this territory, such guardian, on proof, &c., may demand, or sue for and remove the same.

Section 1. That in all cases where any guardian and his ward may both be non-residents of this territory, and such ward may be entitled to property of any description in this territory, such guardian, on producing satisfactory proof to the probate court of the proper county, by certificates, according to the acts of congress in such cases, that he has given bond and security in the territory in which he and his ward reside, in double the amount of the value of the property, as guardian, and it is found that a removal of the property will not conflict with the terms or limitations attending the right by which the ward owns the same, then any guardian may demand, or sue for, and remove any such property to the place of residence of himself and ward.

SEC. 2. That when such non-resident guardian shall produce an exemplification from under the seal of the office, (if there be a seal,) of the proper court, in the territory of his residence, containing all the entries on record in relation to his appointment, giving bond, &c., and authenticated as required by act of congress, as aforesaid, the probate court of the proper county in this territory may cause suitable orders to be made, discharging any resident guardian, executor or administrator, and authorizing the delivering and passing over of such property, and, also, requiring receipts to be passed and filed, if deemed advisable: *Provided*, the benefits of this act shall not be extended to the citizens of any territory or state in which a similar act does not exist, or may not hereafter be passed: *And provided, also*, in all cases thirty days' notice shall be given to the resident guardian, executor or administrator, of the intended application for the order of removal; and the court may reject the application, and refuse such order whenever it is satisfied it is for the interest of the ward that such removal shall not take place.

On evidence produced of his appointment, bond, &c., the court may authorize the delivery of his ward's property to such non-resident guardian, &c. Resident guardian to be discharged.

Proviso.

This act to take effect and be in force from and after its passage.

CHAPTER 79.

HABEAS CORPUS.

An Act regulating proceedings on writs of habeas corpus.

- ARTICLE I. Of proceedings to obtain the writ, and the form thereof.
- II. Of the service and return of the writ, and matters incident thereto.
- III. Of the hearing and other proceedings on the return.
- IV. Miscellaneous provisions.

ARTICLE I.

Of proceedings to obtain the writ, and the form thereof.

§ 1. Who may prosecute a writ of *habeas corpus*.
2. How, and to whom application for such writ shall be made.
3. What facts must be stated in the petition.
4. Must be verified by oath.

§ 5. If confined on process, a copy thereof must accompany the petition, or facts shown in excuse.
6. Writs to be granted without delay in cases where the party can be relieved by the act.
7. When courts of record, or judge of the supreme or circuit court, shall issue writ without petition.
8. Writ to be issued in the name of the territory, to whom directed: What it shall contain.
9. Writ issued by a court, to be under the seal of the court, &c. Issued by a judge, &c., to be signed by him.
§ 10. Name of the person claiming custody of prisoner, and name of prisoner, to be designated on the writ, and how.
11. Shall be endorsed, "By the *habeas corpus* act."
12. Writ, though defective in form, to be obeyed; person served, deemed the person to whom directed.
13. Courts, or magistrates, may require that the costs of bringing up prisoner and remanding him back, be paid by the petitioner. Amount to be specified and endorsed on the writ.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who may prosecute a writ of *habeas corpus.*

SECTION 1. Every person committed, detained, confined, or restrained of his liberty, within this territory, for any criminal, or supposed criminal matter, or under any pretence whatsoever, except when, according to the provisions of this act, such person can be neither discharged or bailed, or otherwise relieved, may prosecute a writ of *habeas corpus*, as hereinafter provided, to inquire into the cause of such confinement or restraint.

How, and to whom application for such writ shall be made.

SEC. 2. Application for such writ shall be made by petition, signed by the party for whose relief it is intended, or by some person in his behalf, to some court of record, in term, or to the judge of the supreme or district court, or any judge of the probate court.

What facts must be stated in the petition.

SEC. 3. The petition must state, in substance, by whom the party for whom relief is prayed, is imprisoned or restrained of his liberty, and the place where; naming both parties, if their names are known, or describing them if they are not; all the facts concerning the imprisonment or restraint, and the true cause thereof, to the best of the knowledge and belief of the party; and if the imprisonment be alleged to be illegal, the petition must also state in what the illegality consists.

Must be verified by oath.

SEC. 4. The facts stated in the petition must be verified by the oath of the applicant, or some other competent person.

If confined on process, a copy thereof to accompany the petition, or facts shown in excuse.

SEC. 5. If the restraint or confinement is by virtue of any warrant, order or process, a copy thereof must accompany the petition; or it must appear, by affidavit annexed thereto, that by reason of the prisoner being removed, or concealed, before the application, a demand of such copy could not be made, or that such demand was made of the person by whom the prisoner is confined or restrained, and a copy refused.

Writ to be granted without delay, in

SEC. 6. Any court or magistrate empowered to grant any writ of *habeas corpus*, under this act, to whom such petition shall be presented, shall grant such writ without delay, unless it appear, from the petition itself or the documents annexed, that the party can neither be discharged, admitted to bail, nor in any other manner relieved, under the provisions of this act.

cases where the party can be relieved by the act.

Sec. 7. Whenever any court of record, or any judge of the supreme or district court, shall have evidence, from any judicial proceedings had before them, that any person is illegally confined, or restrained of his liberty, within the jurisdiction of such court or judge, it shall be the duty of the court or judge to issue a writ of *habeas corpus* for his relief, although no application or petition be presented for such writ.

When courts of record or judge of the supreme or district court shall issue writ without petition.

Sec. 8. Every such writ of *habeas corpus* shall be in the name of the territory of Kansas, directed to the officer or person by whom the party to be relieved is imprisoned or restrained of his liberty, commanding him to have the body of the person detained or imprisoned, together with the time and cause of such imprisonment and detention, before the court or judge, without delay, to do and receive what shall then and there be considered concerning the person imprisoned or detained.

Writ to be issued in the name of the territory, to whom directed, what it shall contain.

Sec. 9. All such writs, issued by a court, shall be under the seal of the court by which they were awarded; and if issued by a judge or justice out of court, they shall be signed by the officer by whom they were granted.

Writ issued by a court, to be under the seal of the court, &c.

Sec. 10. On such writ, the person having the custody of the prisoner may be designated either by his name of office, if he have any, or by his own name; or if both names be unknown or uncertain, he may be described by an assumed appellation; and the person directed to be produced may be designated by his name, or, if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Name of the person having the custody of prisoner, and name of prisoner, to be designated on the writ, and how.

Sec. 11. To the end that no person may pretend ignorance therein, every writ of *habeas corpus* issued under the provisions of this act shall be endorsed with these words: "By the *habeas corpus* act."

Shall be endorsed by the "*habeas corpus* act."

Sec. 12. Such writs shall not be disobeyed for any defect of form, and any one who shall be served therewith shall be deemed to be the person to whom it is directed, although it may be directed to him by a wrong name, or description, or to another person.

Writ, though defective in form, to be obeyed; person served deemed the person, &c.

Sec. 13. The courts and magistrates allowing a writ of *habeas corpus*, may, in their discretion, require, as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up the prisoner, and conveying him back, if remanded, shall be paid by the petitioner; and in such case the

Courts or magistrates may require that the costs of bringing up prisoner and remanding him back, be paid by the petitioner.

court or magistrate shall, on the allowance of the writ, specify the amount, which shall not exceed ten cents per mile, and the amount so to be paid shall be stated in writing on the writ, signed by the clerk, if in term, or by the officer by whom the writ is awarded.

Amount to be specified, &c.

ARTICLE II.

Of the service and return of the writ, and matters incident thereto.

§ 1. Writ, how served.
2. If person on whom it is to be served conceal himself, &c., how served.
3. To be served, by whom.
4. Service not deemed complete until charges are paid or tendered.
5. Duty of officer or person upon whom such writ is served, to obey and return the same.
6. When and in what time return to be made.
7. What facts to be stated in the return of the officer, or the person upon whom such writ is served.
8. Return to be signed; in what case to be verified by oath.
9. Body of the person for whose benefit the writ was awarded, to be brought before the court or magistrate, when, &c.
10. Officer or person on whom writ is served, refusing to obey and make return, without sufficient excuse, &c., attachment to be issued; to whom directed; command thereof.

§ 11. Person so brought, to be confined in jail until he comply with the writ, &c.
12. If the delinquent be a sheriff, the attachment may be directed to the coroner; how he shall proceed.
13. Precept may also be issued to bring the person for whose benefit the *habeas corpus* was allowed before the court.
14. In execution of the attachment or precept, the sheriff may call to his aid the power of the county.
15. Duty of person on whom the writ is served, to bring with the writ all the examination and proceedings in his hands, when the person in his custody stands charged with a criminal offence.
16. How to proceed if such examination accompanied the commitment, &c.
17. If no examination has been filed by the clerk, &c., committing magistrate to appear at the return of the writ; failing, attachment to issue.

Writ, how served.

Section 1. The writ may be served by delivering the same to the officer or person to whom it is directed, or by being left at the jail or other place in which the prisoner is confined, with any under officer, jailor or other person having charge (for the time) of the prisoner.

If person on whom it is to be served conceal himself, &c., how served.

Sec. 2. If the person upon whom the writ ought to be served conceal himself, or refuse admittance to the person attempting the service thereof, it may be served by affixing the same in some conspicuous place on the outside either of his dwelling-house, or of the place where the party is confined.

To be served by whom.

Sec. 3. Writs of *habeas corpus* can only be served by a free white male person, above the age of twenty-one years.

Service not deemed complete till

Sec. 4. In all cases where charges are allowed by the court or officer awarding the writ, the person serving the same shall pay

Charges are paid, or tendered.

or tender to the officer, or other person, having custody of the prisoner, the amount of the charges for bringing up such prisoner; and shall also give bond with security, if required, to the officer or person having custody of the party to be relieved, conditioned for the payment of the charges of conveying back the prisoner, if remanded; otherwise the service shall not be deemed complete.

Duty of officer or person upon whom such writ is served, to obey and return the same.

Sec. 5. It shall be the duty of every officer and other person upon whom a writ of *habeas corpus* shall be served according to the provisions of this act, whether such writ be directed to him or not, to obey and return such writ, according to the exigency thereof, to the court or magistrate by whom the writ was awarded; or in case of the adjournment of such court, or the absence of such magistrate, then before some other judge authorized by this act to issue such writ.

When, and what time return to be made.

Sec. 6. If the place of hearing be within twenty miles of the place of service, the return shall be made within twenty-four hours after service of the writ, and the like time shall be allowed for every additional twenty miles.

What facts to be stated in the return of the officer or person upon whom such writ is served.

Sec. 7. Every officer or other person upon whom such writ of *habeas corpus* shall be duly served, shall state in his return plainly and unequivocally: *First*, whether he has or has not the party in his custody, or under his power or restraint; *Second*, if he has the party in his custody or power, or under his restraint, he shall state the authority and true cause of such imprisonment or restraint, setting forth the same at large; *Third*, if the party be imprisoned or detained by virtue of any writ, order, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ, to the court or officer to whom the same is returnable; *Fourth*, if the person making the return shall have had the party in his power or custody, or under his restraint, at any time before the service of the writ, and has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place.

Return to be signed, in what case to be verified on oath.

Sec. 8. The return must be signed by the person making the same; and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

Body of the person for whose benefit the writ was awarded, to be brought before the court or magistrate, when, &c.

Sec. 9. If any officer or person upon whom a writ of *habeas corpus* shall have been served, shall have in his custody or power, or under his restraint, the party for whose benefit the writ was awarded, he shall also bring the body of such person before the court or magistrate, according to the command of the writ and within the time herein specified for making return, except in case of sickness of such person, as hereinafter provided.

Officer, or person on whom writ is served, refusing to obey and make return, without sufficient excuse, &c., attachment to issue, to whom directed.

SEC. 10. If the officer or person upon whom the writ of *habeas corpus* shall be duly served shall refuse or neglect to obey the same, by producing the party named in the writ, and making a full and explicit return to such court within the time required by this act, and no sufficient excuse for such refusal or neglect be shown, the court or officer before whom such writ shall have been made returnable shall, upon due proof of service thereof, forthwith issue an attachment against the delinquent, directed to the sheriff of any county within this territory, commanding him forthwith to apprehend such delinquent, and to bring him immediately before such court or officer.

Command thereof.

Person so brought to be confined in jail until he comply with the writ, &c.

SEC. 11. On such person being so brought, he shall be committed to close custody, in the jail of the county in which the court or officer shall be, until he shall comply with such writ, and obey any order that may be made by such court or officer in relation to the person for whose relief such writ shall have been issued.

If the delinquent be a sheriff, attachment may be directed to the coroner; how he shall proceed.

SEC. 12. If the delinquent be a sheriff, the attachment may be directed to any coroner, or other person to be designated therein, who shall have full power to execute the same; and such sheriff, upon being brought up, may be committed to the jail of any county other than his own.

Precept may also be issued to bring the person for whose benefit the *habeas corpus* was allowed.

SEC. 13. The court or magistrate by whom such attachment shall be awarded, may also issue a precept to the same sheriff or other person to whom such attachment shall be directed, commanding him to bring forthwith before such court or officer the party for whose benefit such writ of *habeas corpus* shall have been allowed, who shall thereafter remain in the custody of the sheriff or person executing such precept until he shall be discharged, bailed, or remanded, as such court or magistrate shall direct.

In execution of attachment or precept, the sheriff may call to his aid the power of the county.

SEC. 14. In the execution of such writs of attachment and precept, or either of them, the sheriff, or other person to whom they shall be directed, may call to his aid the power of the county, as is provided by law in the execution of writs and process by any officer.

Duty of person on whom writ is served to bring with the writ all the examination and proceedings, &c.

SEC. 15. When the party for whose relief a writ of *habeas corpus* shall have been issued, shall stand committed for any criminal or supposed criminal matter, it shall be the duty of the officer or person upon whom the writ was served to bring with the writ all and every examination and information in his hands, possession, custody or charge, relating to the commitment.

How to proceed if no such examination accompanied the commitment, &c.

Sec. 16. If no such examination shall have accompanied the commitment, nor be in the possession of the officer having the prisoner in custody, such officer shall exhibit the *habeas corpus* when served on him to the magistrate by whom the prisoner was committed, or to the clerk of the court, if the papers are in his office, and it shall be the duty of the magistrate or clerk to deliver to such officer having the custody of the prisoner the examination and proofs relating to the offence charged, to be by such officer returned with the writ.

If no examination has been filed with the clerk, &c., committing magistrate to appear at the return of the writ; failing, attachment to issue.

Sec. 17. If no examination shall have been filed with the commitment, or filed in the office of the clerk of the district court as required by law, and none be produced by the committing magistrate upon the exhibition of the writ of *habeas corpus* to him, as provided in the preceding section, such magistrate shall appear in person at the time and place to which the writ is returnable, and if he fail so to do, may be proceeded against by attachment.

ARTICLE III.

Of the hearing, and other proceedings, on the return.

§ 1. On the return of writ, a day set for hearing of the cause, &c.
2. Facts set forth in the return may be denied on oath, &c.
3. Return and allegations may be amended.
4. Cause to be tried in a summary way, and the prisoner disposed of as the case may require.
5. If no legal cause be shown for detention, prisoner may be discharged.
6. When and in what cases the court or magistrate may remand the party.
7. Who shall not be discharged under the provisions of this act.
8. No slave shall be discharged, nor right of freedom had, under this act.
9. In what cases prisoner to be discharged, when in custody, on process from court or judicial officer.
10. Limitation of the power of courts under this act.
11. Examination and information on criminal charge to be read in evidence before the court, &c.
12. Imprisonment on indictment cannot be discharged under this act, but may be bailed.

§ 13. If imprisoned for criminal offence, and there is sufficient cause for commitment, not to be discharged, but may be bailed or re-committed.
14. If offence is clearly set forth in the warrant of commitment, what evidence shall be received.
15. Order of discharge to be made in writing; when prisoner is discharged, certificate to be given him.
16. Prisoner held to answer for a bailable offence, court how to proceed.
17. When recognizance, with sufficient security, shall be taken, and by whom.
18. Proceedings when prisoner is not discharged or bailed.
19. When prisoner is let to bail or remanded, examination, documents, &c., to be returned, &c.
20. Custody of prisoner between return and judgment thereon.
21. When prisoner need not be brought up on writ.
22. How to proceed in the cases mentioned in the preceding section.
23. Writ or order for a discharge, how to be enforced.
24. Officer not liable for obeying writ or order of discharge. What he may plead in defence.

On return of writ, a day set for hearing of the cause, &c.

SECTION 1. Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or restraint, not exceeding five days thereafter, unless the prisoner shall request a longer time; or the court or officer may proceed to such hearing immediately, as the circumstances of the case may require.

Facts set forth in the return may be denied on oath, &c.

SEC. 2. The party brought before any court or magistrate by virtue of any writ of *habeas corpus*, may deny the material facts set forth in the return, or allege any fact to show either that his detention or imprisonment is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath.

Return and allegations may be amended.

SEC. 3. The return and the allegations made against it may be amended by leave of the court or magistrate before whom the writ is returned at any time, that thereby material facts may be ascertained.

Cause to be tried in a summary way, and the prisoner disposed of as the case may require.

SEC. 4. The court or magistrate shall proceed to examine into the cause of confinement or restraint, and shall settle the facts in a summary way, by hearing the testimony as well on the part of the persons interested as of the prisoner and the person who holds him in custody, and shall dispose of the prisoner as the case shall require.

If no legal cause be shown for detention, prisoner to be discharged.

SEC. 5. If no legal cause be shown for the imprisonment or restraint, or for the continuation thereof, the court or magistrate shall forthwith discharge such party from the custody or restraint under which he is held.

When, and in what cases the court or magistrate shall remand the party.

SEC. 6. It shall be the duty of the court or magistrate forthwith to remand the party if it shall appear that he is detained in custody either; *first*, by virtue of process issued by any court or judge of the United States, in a cause where such court or judge has exclusive jurisdiction; or, *second*, by virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or, *third*, for any contempt especially and plainly charged in the commitment by some court, officer or body having authority to commit for a contempt so charged; or, *fourth*, that the time during which such party may be legally detained has not expired.

Who shall not be discharged under the provisions of this act.

SEC. 7. No person shall be discharged under the provisions of this act who is in custody or held by virtue of any legal engagement or enlistment in the army or navy of the United States; or who, being subject to the rules or articles of war, is confined by one legally acting under the authority thereof; or who is held as prisoner of war under the authority of the United States; or who is in custody for any treason, felony, or other high misdemeanor, committed in any other state or territory of the United States, who, by the constitution and laws of the United States, ought to be delivered up to such state or territory.

No slave shall be discharged, nor right of freedom had under this act.

SEC. 8. No negro or mulatto, held as a slave within this territory, or lawfully arrested as a fugitive from service from another state or territory, shall be discharged, nor shall his right of freedom be had under the provisions of this act.

In what cases prisoner to be discharged when in custody on process from court or judicial officer.

SEC. 9. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, or issued by any officer in the service of judicial proceedings before him, such prisoner can only be discharged on one of the following cases: *First*, where the jurisdiction of such court or officer has been exceeded either as to matter, place, sum, or person; *second*, where, though the original imprisonment was lawful, yet, by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged; *third*, where the process is defective in some matter of substance required by law, rendering such process void; *fourth*; where the process, though in proper form, has been issued in a case or under circumstances not allowed by law; *fifth*, where the process, though in proper form, has been issued or executed by a person who is not authorized by law to issue or execute the same, or where the person having the custody of such prisoner under such process is not the person empowered by law to detain him; *sixth*, where the process is not authorized by any judgment, order or decree, nor by any provision of law.

Limitation of the power of courts under this act.

SEC. 10. But no court under this act shall in any other matter have power to inquire into the legality or justice of any process, judgment, decree or order of any court legally constituted, nor into the justice or propriety of any commitment for contempt made by any court, officer or body according to law, and plainly charged in such commitment, as hereinbefore provided. (*a*)

Examination and information on criminal charge to be read in evidence before the court, &c.

SEC. 11. Where any person, brought before any court or magistrate upon a writ of *habeas corpus*, shall have been committed for any criminal or supposed criminal matter, the examination and information taken and certified by the committing magistrate shall be read in evidence before the court or magistrate before whom the prisoner is brought.

Imprisoned on indictment, cannot be discharged under this act, but may be bailed.

SEC. 12. No person imprisoned on an indictment found in any court of competent jurisdiction, or by virtue of any process or commitment to enforce such indictment, can be discharged under the provisions of this act; but if the offence be bailable,

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(*a*) Stoner vs. The State, 4 Missouri Rep., 614.

he may be let to bail, and if the offence be not bailable, he shall be remanded forthwith.

If imprisoned for criminal offence, and there is sufficient cause for commitment, not to be discharged, but may be bailed, or recommitted.

Sec. 13. When the imprisonment is for a criminal or supposed criminal matter, the court or magistrate before whom the prisoner shall be brought, under the provisions of this act, shall not discharge him for any informality, insufficiency or irregularity of the commitment; but, if from the examination taken and certified by the committing magistrate, or other evidence, it appear that there is sufficient legal cause for commitment, he shall proceed to take bail, if the offence be bailable and good bail be offered; if not, shall commit the prisoner to jail. (*b*)

If offence is clearly set forth in the warrant of commitment, what evidence shall be received.

Sec. 14. When the offence is clearly and specifically set forth in the warrant of commitment, no evidence other than the examination taken and certified thereunto shall be received for or against the prisoner unless such examination has not been taken and certified according to law, in which case the committing magistrate may be examined, if desired by the prisoner, as to the evidence on which the commitment was found, and thereupon the

Proceedings.

court or magistrate shall proceed to bail, discharge or remand the prisoner as the circumstances of the case may require; and in the absence of all such evidence, the prisoner shall not be discharged, but may be bailed or remanded according to the circumstances of the case.

Order of discharge to be made in writing; when prisoner is discharged, certificate to be given him.

Sec. 15. If it appear that any person brought before a court or magistrate under this act is entitled to be discharged, the court or magistrate shall make an order in writing, commanding those who have such person in custody to discharge him forthwith, and shall also deliver to the person discharged a certificate of such discharge.

Prisoner held to answer for bailable offence; court how to proceed.

Sec. 16. If the prisoner be held to answer for a bailable offence, the court or magistrate shall determine in what sum bail shall be given, and shall cause the prisoner to enter into a recognizance with sufficient securities, which recognizance shall be taken, certified and returned as provided by law in like cases; and if the prisoner do not give the required bail, the court or magistrate shall make an order remanding him, and shall, by such order, designate the sum in which bail shall be taken and the court at which he is required to appear, and that, on such bail being entered into in conformity with such order and the provisions of law, the prisoner shall be discharged.

When recognizance with sufficient security shall be taken and by whom.

Sec. 17. Upon the production of such order to any judge or justice, or clerk of a court of record, he shall be authorized to take the recognizance with sufficient securities, in the sum di-

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(*b*) Snowden et al. vs. The State, 8 Missouri Rep., 483.

rected, conditioned for the appearance of the prisoner at the court designated in such order.

Proceedings when prisoner is not discharged or bailed.

SEC. 18. If a prisoner be not entitled to his discharge and be not bailed, the court or magistrate before whom the proceedings are had shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was be entitled thereto; if not so entitled, then he shall be committed to the custody of such officer or person as by law is entitled thereto.

When prisoner is let to bail or remanded, examination, documents, &c., to be returned, &c.

SEC. 19. When any prisoner shall be let to bail, or remanded, all examinations and documents which shall have been produced by the officer or person making the return shall be redelivered to him, the testimony of witnesses examined, the recognizances of all such as testify any thing material taken, and with the examination duly certified and returned as required by law in like cases.

Custody of prisoner between return and judgment thereon.

SEC. 20. Until judgment be given upon the return, the court or magistrate before whom the party shall be brought may either commit such party to the custody of the sheriff of the county in which the proceedings are had, or place him in such care or custody as his age or other circumstances may require.

When prisoner need not be brought up on writ.

SEC. 21. Whenever from the sickness or other infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot, without danger, be brought before the court or magistrate before whom the writ is returnable, the person in whose custody he is may state the fact in his return, verifying the same by his oath; and such court or magistrate, if satisfied of the truth of such allegation, and the return be otherwise sufficient, shall proceed thereon and dispose of the matter in the same manner as if the prisoner were brought before them, except as in the next section provided.

How to proceed in cases mentioned in the preceding section.

SEC. 22. If, in the case mentioned in the preceding section, it appear that the prisoner is legally imprisoned and not bailable, such court or magistrate shall proceed no further therein; if he ought to be held to answer for a bailable offence, an order shall be made and proceeded on as provided by this act in case where the prisoner is remanded for want of bail; and when it appears that the prisoner is entitled to his discharge, the court or judge shall make an order to that effect.

Writ or order for a discharge how to be enforced.

SEC. 23. Obedience to any order for the discharge of a prisoner, granted pursuant to the provisions of this act, may be enforced by the court or magistrate granting such order, by attachment, in the same manner as hereinbefore provided in cases of failure to make return to a writ of *habeas corpus*, and with like effect in all respects.

Officers not liable for obeying writ, or order of discharge.

SEC. 24. No sheriff or other person shall be liable to any civil action for obeying any order of discharge made according to the provisions of this act; and if any action shall be brought against him for suffering any person committed to his custody to go at large pursuant to any such order, he may plead, or with his plea of the general issue, give notice of the same, in bar of such action.

ARTICLE IV.

Miscellaneous provisions.

§ 1. When and under what circumstances warrant may issue to bring prisoner before court or magistrate. To whom directed. Command of warrant.
2. When warrant shall contain an order for arrest of party who has prisoner in custody.
3. Warrant, how executed; what return person detaining such prisoner shall make.
4. Person having such prisoner in custody, shall be brought before court, as for a criminal offence; how proceeded against.
5. Party discharged, when not to be re-imprisoned; when he may be.
6. Prisoner may be removed out of the county in which he is confined, when.
7. Proceedings, if a prisoner obtain a second writ of *habeas corpus.*
8. If remanded for a criminal offence, shall not be discharged on a second writ.
9. Penalty for refusing or unreasonably delaying to issue a writ of *habeas corpus.*
§ 10. Penalty for re-committing, except as herein allowed.
11. Penalty for refusing a copy of process to prisoner.
12. Penalty for refusing to obey writ and make return thereto.
13. Any person concealing prisoner, &c., to avoid writ, or after writ allowed, deemed guilty of a misdemeanor. Penalty.
14. Penalty for arresting person who has once been discharged for the same cause.
15. Penalty on persons aiding in violating two last sections.
16. Persons convicted of a misdemeanor under this act, how punished.
17. How penalties may be sued for and recovered under this act.
18. Pleadings in defence, &c.
19. Recoveries under this act no bar to civil action for damages.
20. Construction of this act as to all cases of *habeas corpus.*

When and under what circumstances warrant may issue to bring prisoner before court or magistrate.

To whom directed.

Command of warrant.

SECTION 1. Whenever it shall appear by satisfactory proof that any person is illegally imprisoned or restrained of his liberty, and that there is good reason to believe that he will be carried out of the territory, or suffer some irreparable injury, before he can be relieved by a writ of *habeas corpus*, any court or magistrate authorized to issue such writs may issue a warrant reciting the facts, and directed to any sheriff, coroner, constable or other person, commanding him to take the prisoner and bring him forthwith before such court or magistrate, to be dealt with according to law.

When warrant shall contain an order for arrest of

SEC. 2. When the proof shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed in the taking or detaining such prisoner, the warrant shall also contain an order for the arrest of such person for such offence.

party who has prisoner in custody.

Warrant, how executed; what return person detaining such prisoner shall make.

Sec. 3. The warrant shall be executed according to the command thereof, and when the prisoner shall be brought before a court or magistrate, the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of *habeas corpus* had been issued in the first instance.

Person having such prisoner in custody, shall be brought before court, &c.

Sec. 4. If the person having such prisoner in custody shall be brought before a court or magistrate as for a criminal offence, he shall be examined, committed, bailed or discharged, in like manner as in other criminal cases of the like nature.

Party discharged, when not to be reimprisoned; when he may be.

Sec. 5. No person who has been discharged by the order of any court or magistrate upon a writ of *habeas corpus*, issued pursuant to this act, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause, *first*, if he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence by the legal order or process of the court wherein he shall be bound by a recognizance to appear, or in which he shall be indicted or convicted for the same offence; or, *second*, if, after a discharge for defect of proof or for any material defect in the commitment in a criminal case, the prisoner may be again arrested on sufficient proof, and committed by legal process for the same offence; or, *third*, if in a civil suit, the party has been discharged for any illegality in the judgment or process hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action; or *fourth*, if, in a civil suit he shall have been discharged from commitment on *mesne* process, and shall afterwards be committed on execution in the same cause, or on *mesne* process in any other cause after such first suit shall have been discontinued; or, *fifth*, when the discharge in any case has been ordered on account of the nonobservance of any of the forms required by law, and the party is again arrested for imprisonment by legal process, for sufficient cause, and according to the forms required by law.

Prisoner may be removed out of the county in which he is confined, when.

Sec. 6. Nor prisoner charged with a criminal offence shall be removed, by writ of *habeas corpus*, out of the county in which he is confined, at any time within fifteen days next preceding the term of the court at which such prisoner ought to be tried, except it be to convey him into the county where the offence with which he is charged is properly cognizable.

Proceedings if a prisoner obtains a

Sec. 7. If a prisoner, remanded under the provisions of this act, shall obtain a second writ of *habeas corpus*, it shall be the second writ of *habeas corpus.*

duty of the officer, or other person, on whom the same shall be served, to return therewith the order remanding the prisoner; and if it appear that the prisoner was remanded for an offence adjudged not bailable, the prisoner shall be forthwith remanded without further proceedings.

If remanded for a criminal offence, shall not be discharged on a second writ.

SEC. 8. It shall not be lawful for any court or magistrate, on such second writ of *habeas corpus*, to discharge the prisoner if he is clearly and specifically charged in the order remanding him, or on the warrant of commitment, with a criminal offence; but the prisoner, on the return of such writ, shall be bailed or remanded to prison, according to the circumstances of the case.

Penalty for refusing or unreasonably delaying to issue a writ of *habeas corpus.*

SEC. 9. If any court or magistrate, authorized by the provisions of this act to grant writs of *habeas corpus*, shall refuse to issue any such writ when legally applied for in a case when such writ may lawfully issue, or shall unreasonably delay the issuing such writ, every member of such court who shall have assented to such refusal or delay, and every such magistrate, shall forfeit to the party aggrieved a sum not exceeding one thousand dollars.

Penalty for recommitting except as herein allowed.

SEC. 10. If any magistrate, either solely or as a member of any court, or in the execution of any order, judgment or process, shall knowingly re-commit, imprison or restrain of his liberty, or cause to be re-committed, imprisoned or restrained of his liberty, for the same cause, (except as in this act provided,) any person so discharged, or knowingly assist therein, he shall be deemed guilty of a misdemeanor, and shall also forfeit to the party aggrieved a sum not exceeding one thousand dollars.

Penalty for refusing copy of process to prisoner.

SEC. 11. Any officer or other person having the custody of any prisoner, committed on any civil or criminal process, who shall refuse to give such prisoner a copy of the process, order or commitment by virtue of which the person is held or detained, within six hours after the demand by the prisoner, or any one on his behalf, shall be deemed guilty of a misdemeanor, and shall also forfeit to the party aggrieved five hundred dollars.

Penalty for refusing to obey writ and make return thereto.

SEC. 12. If any officer or other person upon whom a writ of *habeas corpus* shall be duly served, shall neglect or refuse to obey the same, by producing the party therein named, and making a full and explicit return to the writ, as required by this act, he shall be deemed guilty of a misdemeanor, and shall also forfeit to the party aggrieved a sum not exceeding one thousand dollars.

Penalty for concealing prisoner, &c., to avoid writ.

SEC. 13. Any person having in his custody, or under his power, any person for whose relief a writ of *habeas corpus* shall have been issued, or who would be entitled to a writ of *habeas corpus* to inquire into the cause of his detention, who shall, with intent to elude the service of such writ, or, to avoid the effect thereof, transfer such prisoner to the custody or place him under the control or power of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor, and shall also pay to the party aggrieved five hundred dollars.

Penalty for arresting person, who has once been discharged for the same cause.

Sec. 14. Every one who, knowing that any person has been discharged by competent authority on a *habeas corpus*, shall, contrary to the provisions of this act, arrest such person again, for the same cause, shall be deemed guilty of a misdemeanor, and shall also pay to the party aggrieved five hundred dollars.

Penalty for violating two last sections.

Sec. 15. Every person who shall knowingly aid or assist in the violation of either of the two last preceding sections, shall be deemed guilty of a misdemeanor.

Persons convicted of a misdemeanor under this act, how punished.

Sec. 16. Every person convicted of a misdemeanor under the provisions of this act, shall be punished by fine and imprisonment, or both, in the discretion of the court in which he shall be convicted; but such fine not to exceed one thousand dollars, nor such imprisonment one year.

How penalties may be sued for and recovered under this act.

Sec. 17. The right of action for the penalties declared by this act to be incurred, and to be paid to the party aggrieved, shall not cease by the death of either party, but such penalty may be sued for and recovered by the executors or administrators of the aggrieved party, against the offender or his executors or administrators.

Pleadings in defence, &c.

Sec. 18. The defendants in any such action may plead the general issue, and give the special matter in evidence.

Recoveries under this act, no bar to civil action for damages.

Sec. 19. The recoveries of any of the penalties under the provisions of this act shall be no bar to a civil action for damages.

Construction of this act as to all cases of *habeas corpus*.

Sec. 20. The several provisions contained in this act shall be construed to apply, so far as may be applicable, and except where otherwise provided, to every writ of *habeas corpus*, authorized to be issued by any statute of this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 80.

HIGHWAYS.

An Act to declare the Big Blue river a navigable stream, and a public highway.

§ 1 Big Blue river declared a highway.
2 Penalty for obstructing said stream.
§ 3 How superintendent is to be appointed, and his duty.
4 Fines to be paid into the county treasury.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries, where Big Blue is declared navigable.

SECTION 1. That the Big Blue river, from the place or point at which the fortieth degree of north latitude crosses said river, to the confluence with the Kansas river, in Kansas territory, is hereby declared a navigable stream and a public highway.

Person obstructing navigation declared guilty of misdemeanor, and penalty for said obstruction.

SEC. 2. That any person or persons who shall build a bridge or bridges, mill-dam or mill-dams, or other obstructions, over or in the said navigable stream shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before the district court for the district wherein the said offence shall have been committed, shall be fined not exceeding one thousand dollars, or imprisoned not more than twelve months, at the discretion of the said court; and the said bridge or bridges, mill-dam or mill-dams, or other obstructions, shall be removed at the cost and charges of the offender or offenders.

Manner in which superintendent is appointed, and his duties.

SEC. 3. The county commissioners of the county or counties through which the said stream passes, are hereby authorized to appoint a superintendent, whose duty it shall be to remove or have removed all obstructions whatsoever which may, from time to time, be or collect in, or across, the said stream, by means of any cause whatsoever; and the said superintendent shall be allowed a reasonable compensation for any such removal, or removals, by the said county commissioners, to be paid out of the county treasury.

Fines to be paid into county treasury.

SEC. 4. All fines that may accrue by the provisions of this act shall be paid into the county treasury for county purposes.

This act to take effect and be in force from and after its passage.

CHAPTER 81.

HORSES.

An Act respecting seed horses.

§ 1. Seed horses, &c., not suffered to run at large.
2. Penalty for suffering stallions to run at large.
§ 3. Person taking up, to notify the owner.
4. If they cannot be taken up, notice to be given, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Seed horses, &c., not suffered to run at large.

SECTION 1. If any seed horse, mule, or jackass, over the age of two years, be found running at large, the owner shall be fined for the first offence five dollars, and for every subsequent offence not exceeding ten dollars, to be recovered by action of debt before a justice of the peace, in the name of any person who will prosecute for the same, one-half for his own use, and the other half to the use of the county.

Penalty for suffering stallions to run at large.

SEC. 2. If any stallion or jackass, which is kept for the purpose of breeding or training, should escape from the owner by carelessness, and the same shall be taken up, the owner thereof shall be bound for all damages sustained by any person or persons, and shall be fined for the first offence three dollars, and for every subsequent offence ten dollars, to be collected as specified in section first.

Person taking up to notify the owner.

SEC. 3. If any stallion, jackass, or mule, not used for breeding, over the age of two years, shall be found running at large, and any person shall have taken up the same, such person so doing shall notify the owner in person, or, if not to be found, by leaving written notice at his or her lodgings, and shall be entitled to receive five dollars for the first time, for the second time ten dollars, and for the third time he shall be entitled to castrate the animal, using the ordinary precautions for the preservation of the life of the animal; the animal to be retained possession of by the person taking up until all charges are paid.

If they cannot be taken up, notice shall be first given to owner, &c.

SEC. 4. If any horse, mule, or jack, not used for breeding, be running at large, and cannot be taken up, the owner, upon notice being given him in person, shall, for the first offence pay the person so notifying him three dollars, and for the second notice six dollars, and the third time such horse may be killed by the person giving notice, or by any person who can kill him; such sums to be collected from the owner by action of debt before a justice of the peace.

This act to take effect and be in force from and after its passage.

CHAPTER 82.

HOUSE RENT.

An Act to appropriate money for house rent.

§ 1. Appropriation of money to Thomas Johnson.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Appropriation of money to Thomas Johnson.

SECTION 1. The sum of two hundred dollars is hereby appropriated, and ordered to be paid out of the contingent fund, to Thomas Johnson, for rooms occupied by the two houses of the legislative assembly and their clerks.

This act to take effect and be in force from and after its passage.

CHAPTER 83.

INCLOSURES.

An Act regulating inclosures.

§ 1. All fields shall be inclosed, how.
2. What shall be deemed sufficient inclosure.
3. Sufficiency, by whom determined.
4. Owner of animal trespassing liable for damages.

§ 5. On complaint made to justice of peace, view to be had.
6. Person injuring animals, to pay damages.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

All fields shall be inclosed, how.

Section 1. All fields and inclosures shall be inclosed with a fence sufficiently close, composed of posts and rails, posts and palings, post and plank or palisades, rails alone laid up in the manner commonly called a worm fence, or of turf with ditches on each side, or a hedge composed either of thorn or Osage orange.

What shall be deemed sufficient inclosure.

Sec. 2. All such fences composed of posts and rails, posts and palings, posts and plank or palisades, shall be at least four feet and a half high; those composed of turf shall be at least four feet high, and trenches on either side at least three feet wide at the top and three feet deep; and what is commonly called a worm fence shall be at least five feet high to the top of the rider, or, if not ridered, shall be five feet to the top rail, and the corners shall be locked with strong rails, poles or stakes; and a fence composed of hedge shall be of such height and thickness as, in the opinion of the viewers, will be sufficient to protect such field or inclosure.

Sufficiency, by whom determined.

Sec. 3. In all cases the sufficiency of such fence, whether composed of post and rail, post and palings, post and plank, palisades, turf, worm, or hedge, shall be determined by the persons who may be summoned to view said fence.

Owner of animal trespassing, liable for damages.

Sec. 4. If any horse, cattle or other stock shall break into any inclosure, the fence being of the height and sufficiency aforesaid, or if any hog, shoat or pig shall break into the same, the owner of such animal shall, for the first trespass, make reparation to the party injured for the true value of the damages he shall sustain; and for the second offence the party so trespassed upon shall be entitled to recover from the owner of such animals double damages; and for the third or any subsequent trespass the party so injured shall be allowed treble damages for all losses sustained by such trespass, and be allowed to take into possession the animals so trespassing and be entitled to keep the same until damages with treble charges for keeping and feeding, and all costs of suit, be paid; to be recovered by action of debt before a justice of the peace.

On complaint made to justice of the peace, view to be had.

SEC. 5. Upon the complaint of the party injured to any justice of the peace of the township, such justice shall issue his orders without delay to three disinterested householders of the neighborhood, no ways related to either party, reciting the complaint and requiring them to view the fence where the trespass is complained of, and take a memorandum of the same; and their testimony in such case shall be good evidence on the trial touching the lawfulness of the fence.

Persons injuring animals to pay damages

SEC. 6. If any person, damnified for want of such sufficient fence, shall hurt, wound, kill, lame or destroy, or cause the same to be done by shooting, worrying with dogs, or otherwise, any of the animals mentioned in this act, such person shall satisfy the owner of such animal or animals in double damages with costs.

This act to take effect and be in force from and after its passage.

CHAPTER 84.

INDIANS.

An Act to restrain intercourse with the Indians.

§ 1. Traffic with Indians prohibited, unless in certain cases.
2. Penalty for introducing liquors in the Indian county; exceptions.
3. Penalty for erecting distillery.
4. Duty of court having criminal jurisdiction.
§ 5. If Indians guilty, how punished.
6. Indians competent witnesses; not to prevent transportation across the territory.
7. Who declared Indians within the meaning of this act.
8. What is meant by Indian country.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Traffic with Indians prohibited unless in certain cases.

SECTION 1. That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquors, or wine, to any Indian within the territory, under any circumstances, unless directed by a physician for medical purposes, such person upon conviction thereof, upon indictment, shall be punished by fine of not less than two hundred nor more than five hundred dollars, and imprisoned for not less than one month nor more than six months in the county jail.

Penalty for introducing liquors in the Indian country.

Exceptions.

SEC. 2. If any person shall introduce or attempt to introduce any spirituous liquors or wine into the Indian county, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the war department, such person shall forfeit and pay a sum not exceeding five hundred dollars nor less than two hundred dollars, and be imprisoned as in the last section specified; and if any sheriff, constable, justice of the peace, or other civil officer of this territory has reason to suspect or is informed that any person is about to introduce or has introduced any spirituous liquors or wine into the Indian county, in violation of this act, it shall be lawful for such officer to cause the boat, stores, packages and places of deposit of such person to be searched, and if any such spirituous liquors or wines are found either in the Indian country, or near on the borders thereof, as show an evident intention to carry the same into the Indian country, to cause the same to be destroyed, and also to hold to bail or commit the party searched.

Penalty for erecting a distillery, &c.

SEC. 3. Any person who shall, within the Indian country, set up or continue any distillery or manufactory of ardent spirits, he shall, upon conviction be subject to a fine of not less than two hundred nor more than five hundred dollars, and not less than one nor more than six months' imprisonment in the county jail.

Duty of court having criminal jurisdiction.

SEC. 4. It shall be the duty of each court having criminal jurisdiction to give this act in charge specially to the grand jury at each term.

Indians guilty, punishment.

SEC. 5. Any Indian who may be convicted under the provisions of this act shall be subject to one-fourth the penalty above specified.

Indians competent witnesses.

SEC. 6. Upon any trial under this act, Indians may be deemed competent witnesses, in the discretion of the court, against the accused, whether the accused be a white man or an Indian. Nothing in this act contained shall be construed to prevent the transportation of spirituous liquors and wines across, over and through this territory by traders or others; *provided*, that such traders and others do not sell, barter, give or offer any such spirituous liquors or wines to any Indian or Indians within the borders of this territory.

Not to prevent transportation across and through the territory.

Who declared Indians, within the meaning of this act.

SEC. 7. Nothing in this act specified shall be so construed as to deem any Indian or Indians who may by treaty, or act of congress, have become citizens, to be Indians within the meaning of this act.

What is meant by Indian country.

SEC. 8. The Indian country, as mentioned in this act, shall be understood to mean the several Indian reservations within this territory, held by the Indians in their tribal character.

This act to take effect and be in force from and after its passage.

CHAPTER 85.

INJUNCTIONS.

An Act relating to injunctions.

ARTICLE I. Of power to grant injunctions, and proceedings thereon.
II. Of injunctions, when and how granted.

ARTICLE I.

Of power to grant injunctions, and proceedings thereon.

§ 1. District courts or any judge in vacation, may grant injunctions.
2. Probate courts may grant.
3. Injunction, when returnable.
4. Proceedings on injunction.
5. Notice not necessary.
6. Extent of injunctions to stay proceedings at law.
7. To operate as a release of errors.
8. Bond to be given; condition of the bond.
9. Bond, where filed; when it may be entered into before clerk, &c.
10. Damages to be awarded on dissolution.
§ 11. Decree, &c., how enforced.
12. Court to prescribe rule.
13. Application overruled, certificate to be granted, &c.
14. To disobey injunction after service, how punished; proceedings thereon.
15. After answer filed, motion for dissolution always in order. Proceedings.
16. Continuance of motion granted on affidavit.
17. Testimony on such motion to be by deposition; may be read on final hearing.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who may grant injunctions.

SECTION 1. The district courts, or any judge thereof in vacation, may grant injunctions to stay or prevent wastes; to prevent trespass on any lands, tenements or personal property; to stay proceedings at law in any court either of record or not of record, or in any other case in which the complainant has an equitable claim which may require immediate relief.

Probate court may grant injunctions.

SEC. 2. The probate court, or any judge thereof in vacation, may grant injunctions in all cases to stay judgments and proceedings in any court, whether of record or justice's court, or other causes for which injunctions may be granted as in the first section specified.

When returnable. SEC. 3. Injunctions shall be returnable to the district court, or other court having jurisdiction thereof, of the proper county or district.

Proceedings. SEC. 4. Proceedings on an injunction to stay a suit or judgment at law, or for any other purpose for which injunctions may be granted, shall be had in the county or district where the judgment was rendered or the suit is pending, and the subpœna may be directed in the first instance into any county where the defendant resides; *provided*, that it shall be the duty of any court, or judge within his district, in any part of this territory, to take cognizance in the first instance of any application for an injunction, though such injunction may be returnable to some other court, or in some other county or district within the territory.

Notice not necessary. SEC. 5. No notice shall be necessary upon an application for an injunction in the first instance.

Extent of injunctions to stay proceedings at law. SEC. 6. No injunction shall be granted to stay any judgment or proceeding at law, except so much of the recovery or cause of action as the complainant shall show himself equitably entitled to be relieved against, and so much as will cover costs.

To operate as a release of errors. SEC. 7. Every such injunction shall operate as a release of all errors in the proceedings at law, that are prayed to be enjoined. (*b*)

Bond to be given; condition of the bond. SEC. 8. No injunction shall issue in any case, until the complainant execute a bond with sufficient security, to the other party, in such sum as the court or judge shall deem sufficient to secure the amount, or other matter to be enjoined, and all damages that may be occasioned by such injunction, conditioned that the complainant will abide the decision which shall be made thereon, and pay all sums of money, damages and costs that shall be adjudged against him, if the injunction shall be dissolved.

Bond where filed; when it may be entered into before clerk, &c. SEC. 9. Such bond shall be filed with the clerk of the district or probate court of the county or district in which the subject matter is cognizable, and the bond may be entered into before said clerk, if the court or judge, granting the injunction, shall first approve of the security.

Damages to be awarded upon dissolution. SEC. 10. Upon the dissolution of an injunction, in whole or in part, damages shall be assessed by a jury, or, if neither party require a jury, by the court; but if money shall have been enjoined, the damages thereon shall not exceed ten per centum on the amount released by the dissolution, exclusive of legal interest and costs.

Decrees, &c., how enforced. SEC. 11. The court shall enter a decree according to the circumstances of the case, including the damages so expressed, and

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(*b*) Chouteau vs. Duchouquette, 1 Missouri Rep., 715.

may award execution thereon, or otherwise enforce such decree, according to the rules and practice in chancery. (*c*)

SEC. 12. The courts in which injunctions may be returnable may prescribe all necessary rules on the hearing thereof.

Court to prescribe rule.

SEC. 13. When any application for an injunction shall be overruled, the court or judge shall grant to the defendant in the bill a certificate thereof, and no judge shall afterwards grant an injunction in the same cause in vacation.

Application overruled, certificate to be granted, &c.

SEC. 14. If any person disobey or violate any injunction after it shall be served on him, the court, or any judge thereof in vacation, shall issue an attachment against him for a contempt, and, unless he shall disprove or purge the contempt, the judge may commit him to jail until the sitting of the court in which the injunction is pending, or take bail for his appearance in said court, at the next term thereof, to answer for the contempt, and abide the order of the court.

To disobey injunction after service, how punished; proceedings thereon.

SEC. 15. After the answer is filed, a motion may be made, at any time in term, to dissolve the injunction, and upon such motion the parties may introduce testimony to support the bill and answer, and the court shall decide the motion upon the weight of testimony, without being bound to take the answer as true.

After answer filed, motion for dissolution always in order.

Proceedings.

SEC. 16. If, after a motion for dissolution is made, the plaintiff in the bill will satisfy the court, by his own affidavit, or that of any disinterested person, that any material specified part of the answer is not true, that he has witnesses whose testimony he believes he can procure at the next term who will disprove the same, and that he has not been able to procure such testimony, by using due diligence, since the coming in of the answer, the court may continue the motion until the next term.

Continuance of motion granted on affidavit.

SEC. 17. The testimony to be heard on such motion, aside from the bill and answer, shall be taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore, and the depositions taken to support or dissolve an injunction may be read in the final hearing of the cause in which they have been taken.

Testimony on such motion to be by deposition.

May be read on final hearing.

SEC. 18. All applications for injunctions in the first instance shall be by bill, setting forth in explicit terms the matter complained of, which shall be supported by affidavit of the complainant, or some credible person for him, and no further evidence shall be required on such application.

Application for injunctions to be by bill.

(*c*) Tanner vs. Irwin and Cottle, 1 Missouri Rep., 65.

ARTICLE II.

Of injunctions, when and how granted.

- § 1. Where real estate has been sold, &c., and all the purchase money has not been paid, in what cases a party is entitled to an injunction.
- 2. What court may grant injunctions under this act; when not to be granted.
- § 3. The court sitting, as a court of chancery, to hear, &c., and make final decree, how.
- 4. Amount to be enjoined, damages, &c.
- 5. Not to extend to certain cases.
- 6. Shall extend to cases where the grantor executed bond for title.

In what cases a party is entitled to an injunction; when real estate, &c., has been sold, &c., and all of the purchase money is not paid.

SECTION 1. That in all cases where there shall be a sale and transfer of any lands or real estate, or a sale or transfer of any interest to any lands or real estate, and any part, or the whole of the purchase money thereof, shall not be paid at the time of such transfer and sale, the purchaser of any such lands or real estate shall be entitled to an injunction against all persons interested therein, in any of the following cases: *First*, where the grantor has covenanted a title to the lands or real estate sold in fee simple, and the same has failed, or was wholly defective at the time of such sale; *Second*, where the grantor has [a title as covenanted to a part only of the lands or real estate sold; *Third*, where there is a failure of title to the whole or any part of the lands or real estate sold by such grantor, and continues to be defective at the time of making the application for said injunction.

What court may grant injunctions under this act; when not to be granted.

SEC. 2. Any court now authorized by law to grant injunctions, shall have power to grant injunctions under this act; but no such injunctions shall be granted in any case, nor shall any relief be extended in any case where the purchaser has notice of the defect of title complained of by him, before the purchase thereof.

District court as a court of chancery, to hear, &c., and make final decree, how.

SEC. 3. In all cases arising under the provisions of this act, it shall be the duty of the court, sitting as a court of chancery, to hear all facts relative to such case, and to make a final decree therein, according to such failure, as may be shown to exist in the title to said lands or real estate sold.

Amount to be enjoined, damages, &c.

SEC. 4. The amount to be enjoined by such court, shall be in proportion to the amount of failure of such title in the grantor, with reasonable damages to the purchaser, if any shall be sustained by such failure of title.

Not to extend to certain cases.

SEC. 5. This act shall not extend to any case where the grantor does not covenant a title in fee simple to the lands or real estate sold.

Shall extend to cases where the

SEC. 6. This act shall extend to cases where the grantor has executed bond for title to the lands or real estate sold, in the same manner as though such grantor had executed a deed for the same.

grantor executed bond for title, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 86.

INQUESTS.

An Act concerning inquests.

§ 1. In case of death by violence or casualty, coroner to issue his warrant for summoning a jury.
2. Duty of the constable to whom the warrant is directed, &c.
3. Penalty on constable for failing to execute or return.
4. Penalty on jurors for failing to attend, without reasonable excuse; how sued for, &c.
5. Coroner to administer an oath to the jurors; form of the oath.
6. When the jury is sworn, charge to be given them by the coroner.
7. Jury to remain together, &c.
8. Coroner authorized to issue subpœnas for witnesses.
9. Shall administer oath; form of the oath.
§ 10. Evidence shall be reduced to writing; shall take recognizance, when, &c.
11. Jury to deliver their verdict to the coroner in writing.
12. Duty of coroner, if death by felony; proceeding to apprehend the felon.
13. When a justice of the peace, &c., may perform the duties of coroner.
14. Constable unable to execute duties, warrant may be directed to householder, &c.; his duties.
15. Coroner, or officer holding inquest, shall present to court a statement of costs and expenses. Court shall audit and allow the same. How paid, &c.
16. When justice of peace may perform duties of coroner.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Every coroner, so soon as he shall be notified of the dead body of any person supposed to have come to his death by violence or casualty, found within his county, shall make out his warrant, directed to the constable of the township where the dead body is found, requiring him forthwith to summon a jury of six good and lawful men, householders of the same township, to appear before such coroner, at the time and place in his warrant expressed, and to inquire, upon a view of the body of the person there lying dead, how and by whom he came to his death.

In cases of death by violence or casualty, coroner to issue his warrant for summoning a jury.

SEC. 2. Every such constable, to whom such warrant shall be directed, shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with his proceedings thereon, to the coroner who granted the same.

Duty of the constable to whom the warrant is directed, &c.

Penalty of constable for failing to execute or return.

Sec. 3. Every constable failing to execute such warrant, or to return the same, shall forfeit and pay the sum of eight dollars.

Penalty on jurors for failing to attend without reasonable excuse; how sued for, &c.

Sec. 4. Every person summoned as a juror who shall fail to appear, or make a reasonable excuse to the coroner for his non-attendance, within five days after the time appointed within the warrant, shall forfeit and pay the sum of five dollars, which fine shall be recoverable in an action of debt, at the instance of the coroner, and in the name of the territory, before any justice of the peace, and be applied to the use of the county.

Coroner to administer an oath to the jurors; form of oath.

Sec. 5. The coroner shall administer an oath or affirmation to the jurors, in the following form: "You solemnly swear (or affirm) that you will diligently inquire, and true presentment make, how and by whom the person who here lies dead, came to his death, and you shall deliver to me, coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge."

When the jury are sworn, charge to be given them by the coroner.

Sec. 6. As soon as the jury shall be sworn, the coroner shall give them a charge, upon their oaths, to declare of the death of the person, whether he died by felony or accident; and if of felony, who were principals and who were accessories, and all the material circumstances relating thereto; and if by accident, whether by the act of man and the manner thereof, and who was present and who was the finder of the body, and whether he was killed in the same place where the body was found, and, if elsewhere, by whom, and how the body was brought there, and all other circumstances relating to the death; and if he died of his own act, then the manner and means thereof, and the circumstances relating thereto.

Jury to remain together, &c.

Sec. 7. When the jury are sworn, they shall remain together, and proclamation shall be made for any persons who can give evidence, to draw near and they shall be heard.

Coroner authorized to issue subpœnas for witnesses.

Sec. 8. Every coroner shall be empowered to issue his summons for the witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question.

Shall administer oath.

Form of the oath.

Sec. 9. He shall administer to them an oath or affirmation, in form as follows: "You do swear (or affirm) that the evidence you shall give to the inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth."

Evidence shall be reduced to writing; shall take recognizance, when, &c.

Sec. 10. The evidence of such witnesses shall be taken down in writing and subscribed by them, and, if it relate to the trial of any person concerned in the death, then the coroner shall bind such witnesses, by recognizance, in a reasonable sum, for their appearance before the district court of the county where the felony appears to have been committed, at the next term thereof, there to give evidence, and may commit to the common jail of the county any witness refusing to enter into such bond; and he shall return to the same court the inquisition, written evidence, and recognizance by him taken.

Jury to deliver their verdict to the coroner in writing.

SEC. 11. The jury, having viewed the body, heard the evidence, and made all the inquiry in their power, shall draw up and deliver to the coroner their verdict upon the death under consideration, in writing, under their hand, and the same shall be signed by the coroner.

Duty of the coroner, if death by felony; proceedings to apprehend the felon.

SEC. 12. The coroner, upon an inquisition found before him, of the death of any person by the felony of another, shall speedily inform one or more justices of the peace of the proper county, or some judge, or justice of some court of record, and it shall be the duty of such officer forthwith to issue his process for the apprehension and securing for trial of such person.

When a justice of the peace, &c., may perform the duties of coroner.

SEC. 13. If the coroner is unable to take the inquest, or if he resides at a greater distance than fifteen miles from the place where the dead body is found, any justice of the peace or any judge, or justice of some court of record of the proper county, may take the inquest, and perform all the duties hereby enjoined on the coroner.

Constables unable to execute duties, proceeding.

SEC. 14. If the constable of the proper township is unable to execute the duties required by this act, the officer taking the inquest may direct his warrant to any householder of the county, who shall perform the duties of constable, be subject to the same penalties, and entitled to the same fees.

Coroner or officer holding inquest, shall present to county tribunal a statement of costs and expenses.

SEC. 15. The coroner, or other officer holding an inquest, as provided for by this act, shall present to the tribunal transacting county business a certified statement of all the costs and expenses of said inquest, including his own fees, the fees of jurors, witnesses, constables, and others entitled to fees, for which the county is liable; and such tribunal shall audit and allow the same, and order a warrant to be drawn upon the county treasury, in favor of the coroner, or other officer holding said inquest, for the whole amount of said costs; and the coroner, or other officer, shall, as soon as he receives the amount from the county treasury, pay to each person, upon demand, the amount to which he is entitled.

Court shall admit and allow the same.

How paid, &c.

Justice may act as coroner, when.

SEC. 16. Whenever there shall be no coroner, or where the coroner shall be absent from the county, or reside and be at the time at a greater distance than fifteen miles from the place where his service shall be needed, any justice of the peace may, and, when notified of such necessity, shall, perform all the duties of coroner in relation to inquests.

This act to take effect and be in force from and after its passage.

CHAPTER 87.

INSANE PERSONS.

An Act relative to insane persons.

§ 1. On information, in writing, that any person is of unsound mind, court to cause the facts to be inquired into by a jury.
2. In vacation such information shall be given to a justice.
3. Person alleged to be of unsound mind, may be brought before the court.
4. Duty of certain officers relative to insane persons in the county; to make application, &c.; proceedings.
5. On verdict of jury court shall appoint guardian to such insane person.
6. If person found to be insane, costs, how paid.
7. If person alleged to be insane be discharged, costs how paid.
8. Inquisition may be set aside, &c.
9. Guardian of insane person to enter into bond. Condition thereof.
10. Court may require guardian to give a new bond, &c.
11. Bond, when deposited. Certified copy to be evidence.
12. Guardian to cause notice of appointment to be published, when and how.
13. To take charge of insane person and provide for his support, &c.
14. To take into his possession the estate, real and personal, of such person.
15. Shall make out and file an inventory of the real and personal estate, when, &c.
16. Shall file an additional inventory, when.
17. Inventories, how made and attested.
18. Duties of guardian in prosecuting and defending actions, collecting debts, &c.
19. Probate court may order restraint, support and safe-keeping of insane person, and support and maintenance of his family, &c.
20. When personal estate not sufficient to pay debts, &c., guardian may petition court to mortgage, lease or sell real estate, &c.
21. What facts the petition shall contain.
22. On examination, court may order the mortgage, sale or lease, &c., of the real estate.
23. Time and terms of sale to be directed by the court, &c.
24. Notice of sale shall be given. What it shall contain. How and where published.
§ 25. Lands to be sold at public auction, &c. Report to be made by guardian.
26. Report shall be verified by affidavit; what it shall state, &c.
27. If report be approved, deed to be executed, &c.
28. If disapproved, court may set aside the sale, &c. Order of sale may be renewed.
29. No deed to be exectued until court approve agreement, &c.
30. Conveyance made by order of court under this act shall be valid.
31. Guardian to render account and make settlement once a year.
32. Contract of ward not binding without consent of guardian, &c. Money, &c., disposed of by ward may be received by guardian.
33. Insane person shall not be held to bail, or taken in execution.
34. In suits against insane persons, process to be served on guardian, &c.
35. When the guardian may apply to the probate court for an appropriation to support his ward.
36. What facts shall be contained in a petition for that purpose.
37. When court may make an appropriation to support such person.
38. Allowance not to be made for more than one year, &c.
39. Allegations on oath, that insane person has been restored, court may cause inquiry to be made.
40. If restored to his right mind, person to be discharged.
41. In case of death of insane person, guardianship to cease, &c. Guardian to settle his accounts.
42. Courts shall have power to remove guardian.
43. When removed, he shall settle his accounts, &c.
44. Court has power to control guardians, enforce settlements, orders, &c.
45. When insane person may be confined; duty of court and guardian.
46. If not confined, and no person has charge of him, duty of judge of court of record, or two justices of the peace.
47. Expenses attending such confinement, how paid.
48. Appropriations made out of the county treasury, how and out of whom recovered.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. If information in writing be given to the probate court that any person in their county is an idiot, lunatic, or person of unsound mind, and incapable of managing his affairs, and praying that an inquiry thereinto be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury.

On information, &c., court to cause the facts to be inquired into by jury.

SEC. 2. Such information may also be given, in the vacation of said court, to the judge thereof, in which event he shall call a special term of the court for the purpose of holding an inquiry, whether the person mentioned in such information be of unsound mind or not.

In vacation, such information shall be given to justice.

SEC. 3. In proceedings under this act, the probate court may, in its discretion, cause the person alleged to be of unsound mind to be brought before the court.

Persons may be brought before the court.

SEC. 4. Whenever any judge of the probate court, justice of the peace, sheriff, coroner or constable shall discover any person, resident of his county, to be of unsound mind, (as in the first section of this act mentioned,) it shall be his duty to make application to the probate court for the exercise of its jurisdiction, and thereupon the like proceedings shall be had as in the case of information by unofficial persons.

Duty of certain officers relative to insane persons in their county.

SEC. 5. If it be found by the jury that the subject of the inquiry is of unsound mind, and incapable of managing his or her affairs, the court shall appoint a guardian of the person and estate of such insane person.

On verdict of jury, court shall appoint a guardian.

SEC. 6. When any person shall be found to be insane, according to the preceding provisions, the costs of the proceedings shall be paid out of his estate, or, if that be insufficient, by the county.

If person found insane, costs how paid.

SEC. 7. If the person alleged to be insane shall be discharged, the costs shall be paid by the person at whose instance the proceeding is had, unless said person be an officer, acting officially, according to the provisions of this act, in which case the costs shall be paid by the county.

If person alleged to be insane, be discharged, costs how paid.

SEC. 8. The court may, if just cause appear at any time during the term at which an inquisition is had, set the same aside and cause a new jury to be empanneled to inquire into the facts; but when two juries concur in any case, the verdict shall not be set aside.

Inquisition may be set aside, &c.

SEC. 9. Every guardian of a person of unsound mind, before entering upon the duties assigned him, shall enter into bond to the territory of Kansas, in such sum and with such security as the

Guardian of insane person to enter into bond.

Condition thereof. court shall approve, conditioned that he will take due and proper care of such insane person, and manage and administer his estate and effects to the best advantage according to law, and will faithfully do and perform all such other acts, matters and things touching his guardianship as may be prescribed by law or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

Court may require guardian to give a new bond, &c. SEC. 10. The court may at any time require of any such guardian to give a new bond or additional security, as the circumstances of the case shall require, and if any order for that purpose be not complied with within a reasonable time, to be therein mentioned, the appointment of the guardian may be revoked and another appointed who will give the bond and security required.

Bond, where deposited. Copy to be evidence. SEC. 11. Every bond given by such guardian shall be deposited with the clerk of the court making the appointment, and a copy thereof, duly certified by the clerk, shall be evidence in all respects as the original.

Notice of appointment to be published, when and how. SEC. 12. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published at such time and in such manner as the probate court shall order.

To take charge of insane person, and provide for his support, &c. SEC. 13. Every such guardian shall take charge of the person committed to his charge, and provide for his support and maintenance as hereinafter directed.

To take into his possession goods, effects, &c., of the estate. SEC. 14. It shall be his duty to collect and take into his possession the goods, chattels, moneys and effects, books and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

Shall make out and file an inventory of real and personal estate, when, &c. SEC. 15. Within three months after his appointment such guardian shall make out and file, in the office of the clerk of the probate court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, so far as the same shall have come to the knowledge of such guardian.

Shall file an additional inventory, when. SEC. 16. Whenever any property belonging to such estate shall be discovered after the filing any inventory, it shall be the duty of the guardian to file, as aforesaid, an additional inventory, containing a just and true account of the same from time to time, as the same shall be discovered.

Inventories, how made and attested. SEC. 17. All such inventories shall be made in the presence of, and attested by, two credible witnesses of the neighborhood, and shall be verified by oath or affirmation of the guardian.

Duties of guardian in prosecuting and defending actions, collecting debts, &c.

SEC. 18. It shall be the duty of every such guardian to prosecute and defend all actions instituted in behalf of, or against, his ward, to collect all debts due, or becoming due, to his ward, and give acquittances and discharges therefor, and to adjust, settle and pay all demands due, or becoming due, from his ward, so far as his estate and effects will extend, as hereinafter provided.

Probate court may order restraint, support, and safe keeping of insane person.

And support and maintenance of his family, &c.

SEC. 19. Every probate court by whom any insane person is committed to guardianship may make an order for the restraint, support and safe-keeping of such person, for the management of his estate, for the support and maintenance of his family and education of his children, out of the proceeds of such estate; to set apart and reserve for the payment of debts, and to let, sell or mortgage any part of such estate, real or personal, when necessary for the purposes above specified.

When personal estate not sufficient to pay debts, &c., guardian may petition court to mortgage, lease or sell real estate, &c.

SEC. 20. Whenever the personal estate of any such insane person shall be insufficient for the discharge of his debts, the maintenance of himself and his family, or the education of his children, it shall be the duty of the guardian to apply, by petition, to the court by which he was appointed, praying authority to mortgage, lease or sell the whole or so much of the real estate of such person as shall be necessary to supply the deficiency.

What facts the petition shall contain.

SEC. 21. The petition shall set forth the particulars of the amount of the estate, real and personal, of such insane person, and of the debts by him owing, accompanied by a full, true and perfect account of the guardianship of the petitioner, showing the application of the funds which may have come to his hands.

On examination court may order the mortgage, sale or leasing, &c., of the real estate.

SEC. 22. If it appear to the court upon examination of the matter that the personal estate is insufficient for the purposes above mentioned, and that the property has been applied, as far as the circumstances of the case rendered proper, the court shall make an order directing the mortgage, lease or sale of the whole or such part of the estate as may be necessary or proper.

Time and terms of sale to be directed by the court, &c.

SEC. 23. The court making such order shall direct the time and terms of sale, or, if a mortgage or lease be ordered, the terms of such mortgage or lease, and the manner in which the proceeds shall be secured, and the income or produce thereof be appropriated.

Notice of sale shall be given; what it shall contain; how and where published.

SEC. 24. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place and terms of sale, together with a description of the property to be sold, to be published four weeks successively in some newspaper in or nearest to the county in which the premises to be sold are situated, and shall also put up like notices at six of the most public places in such county six weeks before the day of sale.

Lands to be sold at public auction, &c.

Report to be made.

Sec. 25. Such guardian shall, at the time and place appointed for the sale, sell such lands at public auction to the highest bidder, and make report of his proceedings to the court at the term next succeeding the sale.

Report of guardian shall be verified by affidavit, what it shall state, &c.

Sec. 26. The report shall be verified by the affidavit of the guardian, which affidavit shall also state that such guardian did not, directly or indirectly, become the purchaser of the property sold, and that he was in nowise interested in the purchase thereof.

If the report be approved, deed to be executed, &c.

Sec. 27. If the court approve the proceedings, the guardian shall execute a deed to the purchaser, reciting the order of sale, and conveying to the purchaser all the estate, right, title and interest of such insane person to the estate sold.

If disapproved, court may set aside the sale, &c.; order of sale may be renewed.

Sec. 28. If the report be disapproved, the court may set aside the sale, and order all money paid to be refunded, and all securities given to be cancelled, and may renew the order of sale as often as may be necessary until the proceedings are approved.

No deed to be executed till court approve agreement, &c.

Sec. 29. When the court shall order a lease or mortgage of any estate, no deed or instrument of writing shall be executed for that purpose until the court shall have approved the agreement made by the guardian under such order.

Conveyance made by order of court under this act, shall be valid

Sec. 30. Every conveyance, mortgage, lease and assurance, made under the order of a probate court, pursuant to the provisions of this act, shall be as valid and as effectual as if the same had been executed by such insane person when of sound memory and understanding.

Guardian to render account and make settlement once a year.

Sec. 31. Every guardian of an insane person shall, once a year, or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court.

Contract of ward not binding without consent of guardian

Money, &c., disposed of may be recovered.

Sec. 32. No contract of any person found to be of unsound mind, as hereinbefore specified, which shall be made without the consent of his guardian, shall be valid or binding, and such guardian may sue for and recover any money or property which may have been sold or disposed of by his ward, without his consent.

Insane person shall not be held to bail or taken in execution.

Sec. 33. No such insane person shall be held to bail, nor shall his body be taken in execution, on any civil or penal action.

Suits against insane persons, process to be served guardian, &c.

Sec. 34. In all actions commenced against such insane person, the process shall be served on his guardian; and on judgment against such insane person or his guardian, as such, the execution shall be against his property only, and in no case against his body, nor against the body or estate of such guardian, unless he shall have rendered himself liable thereto by false pleading or otherwise.

Sec. 35. If the estate of any such insane person shall be insufficient to pay his debts, to maintain himself and family, or educate his children, his guardian may apply to the probate court of the proper county, by petition, setting forth the particulars, and praying for an appropriation from the county treasury for the support of his ward.

When the guardian may apply to the probate court for an appropriation to support his ward.

Sec. 36. The petition shall be accompanied by a true and perfect account of the guardianship, an inventory of the estate and effects, and a list of the debts due from such insane person, and it shall be verified by the affidavit of the petitioner.

What facts shall be contained in a petition for that purpose.

Sec. 37. If the probate court shall be satisfied that such estate and effects are insufficient for the purposes above specified, such court may order such sum to be paid to the guardian, out of the county treasury, as to them shall appear reasonable, and cause a warrant to be issued accordingly.

When court may make an appropriation to support such person.

Sec. 38. But now allowance shall be made, at any one time, for a period longer than one year, nor shall such order be made at any time unless the guardian shall have duly accounted for, and settled with such court for the moneys and effects which shall have come to his hands for the support of his ward, out of the county treasury or otherwise.

Allowance not to be made for more than one year, &c.

Sec. 39. If any person shall allege, in writing, verified by oath or affirmation, that any person declared to be of unsound mind, has been restored to his right mind, the court by which the proceedings were had shall cause the facts to be inquired into by a jury.

Allegations on oath that insane person has been restored, court may cause inquiry to be made.

Sec. 40. If it be found that such person has been restored to his right mind, he shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to him.

If restored to his right mind, person to be discharged

Sec. 41. In case of the death of any such insane person while under guardianship, the power of the guardian shall cease, and the estate shall descend and be distributed in the same manner as if such person had been of sound mind; and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his personal representatives.

In case of death of insane person, guardianship to cease, &c.

Sec. 42. The several probate courts shall have power to remove such guardians, at any time, for neglect of duty, misconduct, or mismanagement, or disobedience to any lawful order, and appoint others.

Courts shall have power to remove guardian.

Sec. 43. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

When removed, he shall settle his accounts, &c.

Probate court has power to control guardians, enforce settlements, orders, &c.

Sec. 44. The probate court shall have full power to control the guardian of any such insane person, in the management of the person and estate, and the settlement of his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery.

When insane person may be confined, duty of court and guardian.

Sec. 45. If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person, or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next sitting of the probate court for the county, who shall make such order for the restraint, support and safekeeping of such person as the circumstances of the case shall require.

If not confined, and no preson has charge of him, duty of judge of court of record, or two justices of the peace.

Sec. 46. If any such person of unsound mind, as in the last preceding section is specified, shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, or any two justices of the peace, may cause such insane person to be apprehended, and may employ any person to confine him or her, in some suitable place, until the probate court shall make further order therein, as in the preceding section specified.

Expenses attending such confinement, how paid.

Sec. 47. The expenses attending such confinement shall be paid by the guardian, out of his estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury.

Appropriations made out of the county treasury, how and from whom recovered.

Sec. 48. In all cases of appropriations out of the county treasury, for the support and maintenance, or confinement, of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same.

This act to take effect and be in force from and after its passage.

CHAPTER 88.

INTEREST.

An Act regulating the interest of money.

§ 1. When no rate of interest is agreed upon, six per cent. allowed as legal interest.
2. Parties may agree, in writing, for any rate of interest.
§ 3. Interest, by agreement, may become part of the principal.
4. Not to compound more than once a year.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate of interest is agreed upon, for all moneys after they become due by any instrument of the debtor in writing; for money lent or money due on settlement of accounts, from the day of liquidating the same and ascertaining the balance; for money recovered for the use of another and retained without the owner's knowledge of the receipt; for money due and withheld by an unreasonable and vexatious delay of payment, or settlement of accounts; and for all other money due, or to become due, for the forbearance of payment whereof an express promise to pay interest has been made. (*a*)

When no rate of interest is agreed upon, six per cent. allowed as legal interest.

SEC. 2. The parties may agree, in writing, for the payment of any rate of interest, on money due or to become due upon any contract.

Parties may agree in writing for any rate.

SEC. 3. The parties may, in any contract in writing, whereby any debt is secured to be paid, agree that, if the interest on such debt is not punctually paid, it shall become a part of the principal debt.

Interest may by agreement become a part of the principal, when.

SEC. 4. The preceding section shall not be so construed as to allow any creditor, by agreement, to compound the interest due him, on any contract, oftener than once in a year.

Not to compound more than once a year.

CHAPTER 89.

JAILS AND JAILORS.

An Act concerning jails and jailors.

§ 1. Jail to be kept in good and sufficient repair at the county seat of each county.
2. Sheriff to have the custody and keeping of the jail; may appoint a jailor; liable for his acts.
3. Sheriff and jailor to receive prisoners and persons committed to jail; refusal deemed a misdemeanor, punishable by fine.

§ 4. Debtors and criminals to be confined in different rooms, if practicable.
5. Female prisoners to be kept separate and apart from male prisoners.
6. Convicts to pay expenses of commitment and support in prison; properterty bound therefor from the time of commitment; may be sold by order of court.

(*a*) When a bond or note has been lost or mislaid, the obligor cannot be relieved from the payment of interest for the time it was so lost, unless he made a tender of the money; Rector vs. Mark, 1 Missouri Rep., 206. When money is paid for another, he who pays it is entitled to interest from the time of payment; Chamberlain vs. Smith, administrator, 1 Missouri Rep., 515. A county warrant will bear interest after presentment at the treasury and refusal of payment by the treasurer; Robbins vs. Lincoln county court, 3 Missouri Rep., 42.

§ 7. Prisoner detained for fine or costs only may be discharged; how.

8. Before his discharge he shall take the oath of an insolvent debtor; proceedings thereon.

9. Poor prisoners in criminal cases, how provided for.

10. Expenses of criminal prisoners, before and after conviction, how to be paid.

11. Prisoners (except convictions for felonies.) to have certain liberties.

12. Grand juries to examine jails and make report thereof at each term of the court.

13. Duty of the district court, at each term, to inquire and see that criminals are humanely treated.

14. Keepers of jails to receive prisoners committed under authority of the United States.

15. Liability of jailors on failure of duty in case of United States prisoners.

16. United States to pay for use of jails, jailor's fees, &c.

17. Duty of the sheriff when jail is out of repair; duty of the court in such case; allowance may be made by the court for deputy jailor, when.

§ 18. Such deputy to be appointed by the sheriff, and removable by him at pleasure.

19. Guard may be employed to guard prisoners if jail is insufficient; when, how, &c.

20. Expenses of said guard how audited and paid.

21. If there is no jail, or insufficient one, prisoner may be committed to the jail of some other county.

22. Prisoner committed to jail of a different county, notice to be given to the judge, to be removed for trial by *habeas corpus.*

23. Sheriff or keeper of the jail to obey a writ of *habeas corpus.*

24. Sheriff or keeper failing to obey the writ, punishable as for contempt; to be fined, and liable to the prisoner for damages.

25. Sheriff, or keeper of the jail, may also be removed from office, at the discretion of the court.

26. Fees of sheriff for committing prisoner or executing writ of *habeas corpus.*

27. Prisoners committed from another county, how expenses paid.

28. Sheriff may be imprisoned in the jail of his own county.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Jail to be kept in good repair, &c.

SECTION 1. There shall be kept and maintained, in good and sufficient condition and repair, a common jail, in each county within this territory, to be located at the permanent seat of justice for such county.

Sheriff to have custody, &c., of jail; may appoint a jailor; liable for his acts.

SEC. 2. The sheriff of each county in this territory shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailor under him, for whose conduct he shall be responsible.

To receive persons committed to jail.

Refusal deemed a misdemeanor, how punished.

SEC. 3. It shall be the duty of the sheriff and jailor to receive from constables and other officers all persons who shall be apprehended by such constables or other officers for offences against this territory, or who shall be committed to such jail by any competent authority; and if any sheriff or jailor shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and, on conviction, shall be fined at the discretion of the court.

Debtors and criminals to be confined in different rooms.

SEC. 4. It shall not be lawful for any sheriff or jailor to confine or keep debtors and criminals together in the same room, but they shall be confined and kept separate and apart from each other, in distinct rooms, when practicable.

SEC. 5. Female prisoners shall, in like manner, be confined and kept in apartments separate and apart from male prisoners.

Female prisoners to be kept apart, &c.

SEC. 6. Every person who shall be committed to the common jail within any county in this territory, by lawful authority, for any offence or misdemeanor, if he shall be convicted thereof, shall bear the expense of carrying him or her to the said jail, and also of his or her support while in jail, before he or she shall be discharged; and the property of such person shall be subjected to the payment of such expenses, and shall be bound therefor, from the time of his commitment, and may be levied on and sold, from time to time, under the order of the district court, to satisfy such expenses.

Expenses of commitment and support in prison, &c., to be paid by convict.

SEC. 7. The attorney prosecuting for and on behalf of the territory in such county, may, by and with the advice and consent of the district court, discharge from imprisonment any person convicted of an offence below the grade of felony, and holden only for the payment of fine and costs, who hath no property or means of satisfying the same.

Prisoners detained for fine and costs, may be discharged, how.

SEC. 8. Before any such person shall be discharged, he shall take the oath, and surrender his property and effects, as required by law in the case of insolvent debtors; and the property and effects which may be surrendered shall be first applied to the payment of the fine and costs for which he was imprisoned.

Before discharge, shall take the oath of an insolvent debtor; proceedings.

SEC. 9. Whenever any person, committed to jail upon any criminal process under any law of this territory, shall declare on oath that he is unable to buy or procure necessary food, the sheriff or jailor shall provide such prisoner with food, for which he shall be allowed a reasonable compensation, to be fixed by law; and if, from the inclemency of the season, the sickness of the prisoner, or other cause, the sheriff shall be of opinion that fuel, additional clothes, or bedding, are necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation.

Poor prisoners in criminal cases, how provided for.

SEC. 10. The expenses of imprisonment of any criminal prisoner, such as accrue before conviction, shall be paid in the same manner as the other costs of prosecution are directed to be paid; and those which accrue after conviction, shall be paid as is directed by the act regulating criminal proceedings.

Expenses of criminal prisoners, how paid.

SEC. 11. Every sheriff and jailor, and other person or persons whatsoever, to whose custody or keeping any person or persons shall be committed by virtue of any writ or process, or for any criminal offence, except on conviction for felony, shall permit and suffer him, her or them so committed, at his, her or their will and pleasure, to send for and have any necessary drink or

Prisoners to have certain liberties, except, &c.

food, from what place, and whom they please; and also to have and use such bedding, linen and other things as he, she or they shall think fit, without detaining the same, or any part thereof, or enforcing or requiring him, her or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them in using thereof, or relating thereto.

Grand juries to examine jails and make report.

SEC. 12. It shall be the duty of the grand jury at each term, or a committee to consist of at least three members thereof, to visit the jail of their county, and examine the condition thereof, and inquire into the treatment of the prisoners, and make report thereof to the court.

Prosecuting court to inquire and see that prisoners are humanely treated.

SEC. 13. It is hereby made the special duty of the prosecuting court, at each term, to inquire and see that all prisoners, civil and criminal, are humanely treated.

Keepers of jails to retain prisoners received under authority of United States.

SEC. 14. It shall be the duty of the keeper of the jail in every county within this territory, to receive into his custody any prisoner or prisoners who may be, from time to time, committed to his charge under authority of the United States, and to safely keep every such prisoner or prisoners, according to the warrant or precept of such commitment, until he or they shall be discharged by due course of law of the United States.

Liability of jailors on failure of duty in case of United States prisoners.

SEC. 15. The keeper of every jail aforesaid shall be subject to the same pains and penalties for any neglect or failure of duty therein, as he would be subject to by the laws of this territory for the like neglect or failure in the case of a prisoner committed under the authority of the said laws.

United States to pay for use of jail, jailor's fees, &c.

SEC. 16. The United States shall pay for the use and keeping of such jails at the rate of one dollar per month for each person that shall, under their authority, be committed thereto, and also to the jailor such fees as he would be entitled to for like services rendered in virtue of the existing laws of this territory, during the time such prisoner shall be therein confined, and shall support such of said prisoners as shall be committed for offences.

Duty of sheriff and court when jail is out of repair.

SEC. 17. Whenever the sheriff of any county in this territory shall be of opinion that the jail of his county is insufficient to secure the prisoners that shall be confined therein, it shall be his duty to give notice thereof to the board of county commissioners, and the said board, if they cannot immediately repair the same, may, if they deem it expedient, allow any sum not exceeding one hundred and fifty dollars per annum for the pay of a deputy jailor.

Deputy to be appointed by sheriff, and removable at pleasure.

SEC. 18. Such deputy shall be appointed by the sheriffs, and shall be under their sole direction, and removable by them at pleasure.

SEC. 19. Whenever any sheriff shall have in his custody any person or persons charged with any felony of this territory, and the jail of his county shall be insufficient, or if there shall be no jail in his county, he may, with the sanction of any of the judges of the district courts, or any two of the commissioners of his county, employ a guard sufficient for the guarding and safekeeping of such prisoner or prisoners, in his own county; the said guard not to exceed, however, in any instance, more than three persons.

Guard may be employed to guard prisoners, when

SEC. 20. The expenses of said guard to be audited and paid as other county expenses.

Expenses, how audited and paid.

SEC. 21. It shall be lawful for the sheriff of any county of this territory when there shall happen to be no jail, or where the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person, or persons so committed as aforesaid, and him, her, or them, safely keep, subject to the order or orders of the district judge for the county from whence said prisoner was brought.

Prisoner may be committed to jail of some other county, when.

SEC. 22. It shall be the duty of the sheriff, so committing any person or persons, as aforesaid, for any criminal offence, forthwith to notify the district judge for the district where such person or persons, so committed, is or are to be tried, of the committing of such person or persons to the jail of such other county, and transmit at the same time, to such district judge, a copy of the day and cause of the caption and detention of such person or persons; whereupon, it shall be the duty of such district judge, within fifteen days next preceding the first day of the district court of the county where such person or persons is or are to be tried, to issue a writ or writs of *habeas corpus*, directed to the sheriff or keeper of the county where such person or persons is or are committed, commanding him or them to have the body or bodies of such persons thus committed, together with the day and cause of his, her, or their caption and detention, before the district court of the said county for the trial of such offences, on the first day of the next term of the said court.

When so committed, notice to be given to judge.

Removed for trial by *habeas corpus*.

SEC. 23. It shall be the duty of the sheriff, or keeper of the jail, to bring, or cause to be brought, the said person or persons thus committed as aforesaid, on the day and at the place mentioned in the said writ.

Sheriff or jailor to obey writ of *habeas corpus*.

SEC. 24. Any sheriff or keeper of the jail as aforesaid failing or neglecting to make return as aforesaid, and to bring the

Failing to obey writ, how punished.

body or bodies of such person or persons, according to the command in the said writ, shall be deemed guilty of a contempt to the said court, and shall be liable to be attached and be committed to the jail of the county, there to remain, without bail or mainprize, until he shall obey said writ; and shall moreover forfeit to the prisoner or party aggrieved a sum not exceeding five hundred dollars, to be apportioned according to the nature, aggravation and circumstances of the case, and the injury which the party aggrieved may sustain thereby, to be recovered by the prisoner or party aggrieved, his executors or administrators, in an action on the case, founded upon this statute.

May also be removed from office.

SEC. 25. The said sheriff or keeper of the jail may also, in the discretion of said court, be removed from office, and rendered incapable of holding or executing the same thereafter.

Fees of sheriff in such cases.

SEC. 26. The sheriff, for committing any prisoner as aforesaid, or for executing any writ of *habeas corpus* under this act, shall be entitled to the like fees as are provided by law for similar services.

Expenses how paid.

SEC. 27. In all cases where a person is committed from another county, for a criminal offence under this act, such county, or the prisoner, or the territory, shall pay the expenses in the same manner as if the commitment had been in the county where the offence was committed; and in civil suits, the plaintiff or defendant shall pay the expenses in the same manner as if the imprisonment had taken place in the county where the suit commenced.

Sheriff may be imprisoned in the jail of his own county.

SEC. 28. The sheriff may be imprisoned in the jail of his own county, and for the time that he shall be confined, the coroner shall have the custody, rule, keeping and charge of the said jail, and shall by himself and his sureties, be answerable for the faithful discharge of his duties in that office.

This act to take effect and be in force from and after its passage.

CHAPTER 90.

JUDGMENTS AND DECREES.

An act regulating judgments and decrees.

§ 1. Lien of judgments and decrees in the supreme court; extent of.

2. In any court of record, extent of.

§ 3. Lien of judgment or decree to extend to real estate acquired after rendition. To commence on the day after rendition, and continue three years after, &c.

§ 4. Execution may issue without *scire facias*, when.
5. Effect of sale of land under junior judgment, &c.
6. Proceeds, how applied.
7. *Scire facias* to revive, may issue within ten years; not after.
8. *Scire facias* before judgment after expiration of lien, effect of.
9. *Scire facias*, how served.
10. If defendant cannot be found, order of publication.
11. Order how and where published.
12. On service or publication, &c., judgment or decree to be revived.
13. If one or more plaintiffs die, judgment survives; when to the executor or administrator, and when to heir. In whose name revived, &c.
14. If several defendants, and some die, judgment, &c., concerning real estate survives and against whom. How revived. If concerning personality, against whom it survives, &c. How revived.
15. If defendant die after levy of execution on real estate, sheriff shall not execute, but return it, &c.
16. Judgment or decree may be revived against the administrator *de bonis non*, when.
17. Acknowledgment of satisfaction to be entered, when.
18. By whom to be entered.
§ 19. If made in court, to be entered of record. If in vacation, on the minutes &c.
20. If made by agent, his authority to be filed.
21. Effect of acknowledgment.
22. If party receiving satisfaction refuse to acknowledge, proceedings.
23. Court may order satisfaction to be entered, when.
24. Costs, how recovered.
25. Clerks to leave space in record for entering satisfaction.
26. What entries shall be made by clerk, in satisfaction of judgment or decree.
27. Clerks to keep dockets of judgments and decrees.
28. Entries they shall make therein.
29. What such docket shall contain.
30. Transcripts of jugdment and decrees of supreme court to be entered therein.
31. Clerk to forfeit one hundred dollars, if he fail to comply with the preceding section, &c.
32. Copy of decree of conveyance of real estate to be recorded, where and when. Effect of a failure.
33. Not to be recorded, when.
34. Construction of the term "real estate."

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Lien of judgments and decrees in the district court; extent of.

SECTION 1. Judgments and decrees obtained in the supreme court shall, upon the filing of a transcript thereof in the clerk's office of the district court of any county, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

In any court of record, extent of.

SEC. 2. Judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate tn the county in which the court is held.

Lien of judgment or decree to extend to real estate acquired after rendition.

To commence on the day of rendition and continue three years, &c.

SEC. 3. The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof, as to that which was owned when the judgment or decree was rendered. Liens shall commence on the day of the rendition and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they were rendered.

Execution may issue without *scire facias*, when.

SEC. 4. Execution may issue at any time during the existence of the said lien, without a *scire facias* to revive the judgment. (*a*)

Effect of sale of land under junior judgment, &c.

SEC. 5. The sale of lands under a junior judgment or decree shall pass the title of the defendant, subject to the lien of all prior judgments and decrees then in force.

Proceeds how applied.

SEC. 6. The money arising from such sale shall be applied to the payment of the judgment or decree under which it may have been made.

Scire facias to revive, may issue within ten years; not after.

SEC. 7. The plantiff, or his legal representative, may, at any time within ten years, sue out a *scire facias* to revive a judgment and lien; but after the expiration of ten years from the rendition of the judgment, no *scire facias* shall issue.

Scire facias before, and judgment after expiration of lien, effect of.

SEC. 8. If a *scire facias* is issued to revive a judgment and lien before the expiration of the lien, and a judgment of revival is afterward rendered, although it may be after the expiration of the lien, yet the said lien shall prevail over all intermediate incumbrances.

Scire facias, how served.

SEC. 9. The *scire facias* shall be served on the defendant, or his legal representatives, terre-tenants, or other persons occupying the land, and be directed to and executed in any county in this territory.

If defendant cannot be found, order of publication to be made.

SEC. 10. If the defendant cannot be found, the court may make an order, setting forth briefly the nature of the case, and requiring all persons interested to show cause, at the next term of such court, why judgment or decree should not be revived and the lien continued.

Order, how and where published.

SEC. 11. The order shall be published in some newspaper printed in this territory for three weeks, the last insertion to be two weeks before the commencement of the term at which the parties are required to appear.

On service or publication, &c., judgment or decree to be revived.

SEC. 12. If, upon service of the *scire facias* or publication as aforesaid, the defendant or any of his creditors do not appear and show cause against reviving the judgment or decree, the same shall be revived and the lien continued for another period of two years, and so on, from time to time, as often as may be necessary.

If one or more plaintiffs die, judgment survives, when to the executors or administrators, and when to the heirs, &c.

SEC. 13. If one or more plaintiffs in a judgment or decree die before the same is satisfied or carried into effect, the judgment or decree, if concerning the personalty, shall survive to the executors or administrators of such deceased party; and, if concerning real estate, to his or their heirs or devisees; and execution may be sued out in the name of the surviving plaintiff or plaintiffs, for the benefit of himself or themselves, and the legal

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(*a*) *Vide* Downsman, vs. Potter, 1 Missouri Rep., 518.

representatives of the deceased party; or the judgment or decree may be revived in the name of such legal representatives and surviving plaintiffs, and execution sued out by them jointly.

In whose name revived, &c.

SEC. 14. When there are several defendants in a judgment or decree, and some of them die before the same is satisfied or carried into effect, the judgment or decree, if concerning real estate, shall survive against his or their heirs or devisees, and execution may issue against any surviving defendant or defendants; or such judgment or decree may be revived by the heirs or devisees of any or all such deceased defendants by *scire facias*, and execution may be sued out against the surviving defendant or defendants, and the heirs or devisees of such deceased defendants, or such of them as are made parties jointly; (*b*) but if such judgment or decree concern the personalty, execution shall be sued out only against the surviving defendant or defendants; and if the lien of the judgment or decree has not expired, it shall be exhibited in the probate court for allowance as other demands against the deceased defendant or defendants' estate; but if the lien has expired, the judgment or decree shall be revived against the executors or administrators of the deceased defendant or defendants, and then shall be proceeded with as hereinbefore directed.

If several defendants and some die, judgment, &c., concerning real estate survives, and against whom.

How revived.

If concerning personality, against whom it survives, &c.

How revived.

SEC. 15. If any defendant shall die after his real estate shall have been seized on execution, the service thereof shall not be completed, but the sheriff shall return the execution, together with the fact of the defendant's death, which shall be a sufficient indemnity to him for his failure to proceed.

If defendant die after levy of execution on real estate, sheriff shall not execute but return it, &c.

SEC. 16. If an executor or administrator be plaintiff or defendant in a judgment or decree, and shall die, resign or be dismissed before the same is satisfied or carried into effect, the judgment or decree may be served by or against the administrator *de bonis non*, in the manner aforesaid.

Judgment, &c., may be revived by or against administrator *de bonis non*, when.

SEC. 17. When any judgment or decree is satisfied otherwise than by execution, the party in whose favor the same was rendered shall immediately thereafter enter an acknowledgment of satisfaction thereof in the court where the same was obtained, or before the clerk of such court, in vacation.

Acknowledgment of satisfaction to be entered, when.

SEC. 18. Satisfaction may be entered by the plaintiff in person, by his attorney of record, or by his agent, duly authorized in writing, under the hand and seal of the plaintiff.

By whom entered.

(*b*) *Vide* Armstrong vs. Prewit, 5 Missouri Rep., 476. As to lien of judgments, *vide* Friar vs. Ray, 5 Missouri Rep., 510. The judgment of a county court on a demand against a deceased person's estate is binding and conclusive until reversed; McKinney, administrator, vs. Davis, 6 Missouri Rep., 501. A memorandum at the foot of a judgment is no part of it; Fugate vs. Glascock, Missouri Rep., 577. As to the priority of lien between a judgment and conveyance, *vide* Jones vs. Luck, 7 Missouri Rep., 551.

If made in court, to be entered of record.

When on the minutes, &c.

SEC. 19. If the acknowledgment is made in court, it shall be entered of record; but if made before the clerk in vacation, it shall be entered on the minutes, signed by the party making it, and attested by the clerk.

If made by agent, his authority to be filed.

SEC. 20. When made by an agent, his authority shall be filed in the office of the clerk of the court where the acknowledgment is made.

Effect of acknowledgment.

SEC. 21. The acknowledgment so made shall forever discharge and release the judgment or decree.

Refusal to acknowledge, satisfaction; proceedings.

SEC. 22. If a person receiving satisfaction of a judgment or decree shall refuse, within a reasonable time after request of the party interested therein, to acknowledge satisfaction on the record, or cause the same to be done in the manner pointed out by this act, the person so interested may, on notice given, apply to the court to have the same done.

Court may order it to be entered, when.

SEC. 23. The court may, thereupon, order the satisfaction to be entered by the clerk, with the like effect as if acknowledged as aforesaid.

Costs how recovered.

SEC. 24. The costs attending such acknowledgment shall be recovered of the party refusing by fee-bill, as in other cases.

Clerks to leave a space in record for entering satisfaction.

SEC. 25. The clerks of courts of record, in recording judgments or decrees, shall leave a space or margin on the record for entering a memorandum of the satisfaction or vacation of such judgment or decree.

Entries to be made by clerks on satisfaction of judgment or decree.

SEC. 26. When satisfaction of a judgment or decree shall be acknowledged or entered by order of the court, or satisfaction shall be made by execution, or such judgment or decree shall be vacated, the clerk shall enter upon the margin of the judgment or decree a memorandum of the disposition thereof, the date, the book and page in which the evidence is entered or recorded.

Clerks to keep dockets of judgments and decrees.

SEC. 27. The clerks of courts of record shall keep in their respective offices a well bound book, for entering therein an alphabetical docket of all judgments and decrees.

Entries they shall make therein.

SEC. 28. They shall, during every term, or within thirty days thereafter, enter in such docket all final judgments and decrees rendered at such term, in alphabetical order, by the name of the person against whom the judgment or decree was entered; and if the judgment or decree be against several persons, it shall be docketed in the name of each person against whom it was recovered, in the alphabetical order of their names respectively.

What such docket shall contain.

SEC. 29. Such docket shall contain, in columns ruled for that purpose, *first*, the names of the parties; *second*, the date; *third*, the nature of the judgment or decree; *fourth*, the amount of the debt, damages and costs; *fifth*, the book and page in which it is entered; *sixth*, a column for entering a note of the satisfaction or other disposition thereof.

Transcripts of judgments, &c., of district court to be entered therein.

SEC. 30. Transcripts of the judgments or decrees of the supreme court shall, so soon as they are filed in the office of the clerk of the district court, be entered in the said docket.

Clerk to forfeit $100 if he fail to comply with the preceding sections, &c.

SEC. 31. Any clerk failing to comply with the provisions of any of the five preceding sections, or who shall fail to enter in said docket, within the time required, the judgment of justices' courts, transcripts of which have been filed in his office, shall forfeit and pay to the party who is or may be injured thereby the sum of one hundred dollars, to be recovered by action of debt.

Copy of decree of conveyance of real estate to be recorded, where and when.

Effect of failure.

SEC. 32. In all cases where any court of record shall decree a conveyance of real estate, or that any real estate pass, the party in whose favor the decree is rendered shall cause a copy thereof to be recorded in the office of the recorder of the county wherein the lands passed, or to be conveyed, lie, within eight months after such decree is entered; and if such decree be not so recorded, it shall not be valid, except between the parties thereto, and such as have actual notice thereof.

Not to be recorded, when.

SEC. 33. Nothing contained in the preceding section shall be so construed as to require a party to record a decree, when a conveyance has been executed in pursuance thereof, and acknowledged or proved, and deposited for record in the proper office within the time therein limited.

Construction of the term "real estate."

SEC. 34. The term "real estate," as used in this act, shall be construed to include all estate and interest in lands, tenements and hereditaments liable to be sold upon execution.

This act to take effect and be in force from and after its passage.

CHAPTER 91.

JUDICIAL DISTRICTS.

An Act defining the judicial districts.

§ 1. First judicial district.
2. Second judicial district.
§ 3. Third judicial district.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

First judicial district.

SECTION 1. The counties of Doniphan, Atchison, Jefferson, Calhoun, Douglas and Leavenworth shall compose the first judicial district, and the honorable Samuel D. Lecompte, chief justice, is hereby assigned to the first judicial district.

Second judicial district.

Sec. 2. The counties of Johnson, Lykins, Linn, Bourbon, Allen, Anderson, Franklin and Shawnee shall compose the second judicial district, and the honorable Rush Elmore is hereby assigned to the said second judicial district.

Third judicial district.

Sec. 3. The counties of Nemaha, Marshall, Riley, Breckenridge and Madison shall compose the third judicial district, and the honorable Sanders W. Johnson is hereby assigned to the said third judicial district.

This act to take effect and be in force from and after its passage.

CHAPTER 92.

JURORS.

An Act concerning jurors.

§ 1. Courts may order jurors to be summoned.
2. Qualifications of grand jurors.
3. Grand jurors to be summoned six days before the term; how and by whom.
4. In case of non-attendance of grand juror, &c., another may be sworn.
5. Grand juror may be indicted by the jury of which he is a member; proceedings.
6. Qualifications of petit jurors.
7. Grand or petit juror may be challenged or discharged, when.
8. Exception, not after the jury are sworn.
9. Persons exempt from serving.
10. Grand jurors exempt from serving on petit jury during same term.
11. Service of juries to be equalized; certain persons to be avoided.
12. Who shall not be sworn as jurors.
§ 13. Who shall not sit on jury.
14. In civil cases, either party may challenge three jurors.
15. Court may order special jury of eighteen in civil cases.
16. If the panel is exhausted, the court to order others to be summoned.
17. Penalty for non-attendance.
18. Compensation of grand jurors. Discretionary with the county tribunal.
19. Clerk to keep an account of service of grand jurors, &c., on application. To be verified by the affidavit of the juror.
20. On demand, clerk to give juror scrip for the amount, &c.
21. Fees of clerks in such cases.
22. Forfeiture of $100 on any officer for receiving reward, &c., for excusing a person from serving on a jury.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Courts may order jurors to be summoned.

Section 1. All courts before whom jurors are required, may order the marshal, sheriff or other officer to summon a sufficient number of jurors.

Qualifications of grand jurors.

Sec. 2. Every grand juror shall be a free white citizen of the territory of Kansas, resident in the county or district, over twenty-one years of age; shall be a householder and otherwise qualified.

Grand jurors to be summoned six days before the term; how and by whom.

Sec. 3. Every grand juror shall be summoned either personally, or by a writing left at the dwelling-house of said juror, six days at least before the first day of the court.

Non-attendance of grand juror, &c., another may be sworn.

Sec. 4. In case of the non-attendance of any grand juror after he shall have been qualified, the court may cause another to be sworn.

Grand juror may be indicted by the jury of which he is a member; proceedings.

Sec. 5. Any grand juror may be indicted or presented by the grand jury of which he is a member; but when any complaint shall be made against a grand juror, the foreman shall inform the prosecuting attorney of the same, and if, on examination, there are grounds for proceeding against said juror, he shall inform the court thereof, and the court shall discharge the juror, and cause another to be sworn if necessary.

Qualifications of petit jurors.

Sec. 6. Every petit juror shall be a free white male citizen of the territory, resident in the county, above the age of twenty-one years, and not otherwise disqualified.

Grand or petit juror may be challenged and discharged, when.

Sec. 7. If any person be summoned as a grand or petit juror, who is not qualified as required by law, he may be challenged and discharged upon such challenge being verified according to law, or by his own oath.

Exceptions, not after the jury are sworn.

Sec. 8. No exception to a juror on account of his citizenship, non-residence, state or age, or other legal disability, shall be allowed after the jury are sworn.

Persons exempt from serving.

Sec. 9. No person exercising the functions of a clergyman, practitioner of physic, attorney at law, clerk or other officer of the court, ferry-keeper, overseer of roads, coroner, constable, or judge of a court of record, or any person over the age of sixty years, shall be compelled to serve on a jury.

Grand jurors not to serve on petit jury.

Sec. 10. Grand jurors shall not be compelled to serve on a petit jury during the same term.

Service on juries to be equalized.

Certain persons to be avoided.

Sec. 11. Service on juries shall be equalized as nearly as practicable among the citizens liable to be summoned on juries; and all officers shall avoid persons of ill-fame, habitual idlers and vagabonds, and those who are under the undue influence of either party.

Who shall not be sworn as jurors.

Sec. 12. No witness, or person summoned as a witness, in any civil cause, and no person who has formed or expressed an opinion concerning the matter in controversy in any such cause which may influence the judgment of such person, or who is of kin to either party to any such cause within the fourth degree of consanguinity or affinity, shall be sworn as a juror in the same cause.

Who not to sit on jury.

Sec. 13. No person who is conscientiously opposed to the holding slaves, or who does not admit the right to hold slaves in this territory, shall be a juror in any cause in which the right to hold any person in slavery is involved, nor in any cause in which any injury done to or committed by any slave is in issue, nor in any criminal proceeding for the violation of any law enacted for the protection of slave property and for the punishment of crimes committed against the right to such property.

In civil cases either party may challenge three jurors.

Sec. 14. In civil trials either party is entitled to challenge peremptorily three jurors.

Court may order special jury of 18 in civil causes.

Duty of sheriff in such cases.

Sec. 15. All courts before whom juries are required have the power to order a special jury of eighteen for the trial of any civil cause, and, when ordered, the sheriff shall summon them according to the order of the court, and make out and deliver to each party, or his attorney, a panel of the jury so summoned.

If the panel is exhausted, the court to order others to be summoned.

Sec. 16. If such a panel be exhausted, by challenge or otherwise, before the jury is sworn, the court shall order the sheriff to summon a sufficient number of other jurors to complete the jury.

Penalty for non-attendance.

Sec. 17. A person summoned as a grand or petit juror, and failing to attend, shall be fined not exceeding ten dollars, unless a satisfactory excuse be offered.

Compensation of grand jurors.

Discretionary with county tribunal.

Sec. 18. Each grand juror shall receive one dollar for every day he may actually serve as such, and five cents for every mile he may necessarily travel in going from his place of residence to the court-house and returning to the same, in the discretion of the county tribunal, to be paid out of the county treasury.

Clerk to keep an account of service of grand jurors, &c., on application.

To be verified by the oath of the juror.

Sec. 19. The clerk of the court shall keep a book, in which he shall enter, upon the application of each grand juror, the number of days such grand juror shall have served as such, and the number of miles necessarily traveled in obedience to the summons to serve on the grand jury, and such entry shall be verified by the oath of such juror.

Clerk to give juror a scrip for the amount, &c.

Sec. 20. Upon the demand of such grand juror, the clerk shall give him a scrip, verified by his official signature, showing the amount which such juror is entitled to receive out of the county treasury.

Fees of clerks in such cases.

Sec. 21. The clerk shall receive one dollar and fifty cents for his services at each term of the court, in complying with the provisions of the next preceding sections.

Forfeiture of $100 on any officer for receiving reward, &c., for excusing a person from serving on jury.

Sec. 22. If any civil officer, directly or indirectly, take, accept, or receive any money, reward or other thing, to excuse any person from serving, or being returned to serve, on any jury, he shall forfeit one hundred dollars for every such offence, one-half to the territory, and the other half to the party suing for the same, to be recovered with costs, by action of debt, in any court having cognizance thereof.

This act to take effect and be in force from and after its passage.

CHAPTER 93.

JUSTICES' COURTS.

An Act to establish and regulate justices' courts.

ARTICLE I.	Of justices, their eligibility and term of office; jurisdiction and powers.
II.	Of jurisdiction and limits thereof; when co-extensive with county.
III.	Of the commencement of suits, service and return of process; of appearance and pleadings of parties; of adjournments; of witnesses and jurors; of executions and proceedings thereon, and of garnishments.
IV.	Of appeals; proceedings thereon.

ARTICLE I.

Of justices, their eligibility and term of office; jurisdiction and powers.

§ 1. Four justices to be in each township.
2. To hold their offices in their respective townships.
3. Eligibility of justice.
4. Term of office.
5. When the township is changed, shall continue to exercise the duties.

§ 6. Jurisdiction throughout the county.
7. To punish for contempt.
8. Punishment for contempt to be by fine or imprisonment.
9. Powers of justice.
10. When to deposit all papers with tribunal clerk.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Each municipal township in this territory shall be entitled to four justices of the peace. Four justices.

SEC. 2. Every justice of the peace shall hold his office within the township for which he is commissioned. Hold office in township

SEC. 3. No person shall be eligible to the office of justice of the peace except a citizen of the United States, and one who shall be an inhabitant of the territory and of the county and township for which he is chosen three months next preceding his appointment, if such county and township shall have been so long established, and if not, then an inhabitant thereof at the time of organization. Eligibility of justices

SEC. 4. Every justice of the peace shall hold his office for the term of five years, and until his successor is duly chosen and qualified. Term of office.

SEC. 5. Whenever by a change of township or county lines a justice of the peace shall be thrown into another township or county than that for which he was commissioned, he shall con- Whenever township changes, continue to exercise duties.

tinue to exercise the duties of his office in the township or county into which he may be so thrown until the expiration of his term of office.

Jurisdiction throughout counties.

SEC. 6. Justices of the peace shall have power and jurisdiction throughout their respective counties, *first*, jointly and severally, to cause to be kept all laws made for the preservation of the peace; *secondly*, to cause to come before them, or any of them, any person or persons who break the peace and commit them to jail or bail them, as the case may require; *third*, to arrest and cause to come before them persons who attempt to break the peace, and compel them to give security for their good behavior or to keep the peace, or both; and if such persons refuse to give security, they shall be committed to prison until they find the same; and every recognizance so taken shall be certified to the next term of the district court for the county in which such recognizance is taken.

To punish for contempt.

SEC. 7. Any justice of the peace may punish for contempt persons guilty of disorderly, contemptuous or insolent behavior, or any merry or boisterous conduct, in the presence of such justice, or near enough to disturb the justice in the discharge of his duties while engaged in the trial of a cause or holding his court; or for resistance to the execution of any lawful writ, process or order, in the presence of the justice; or for any resistance to, or refusal to obey, the commands of any lawful writ, process or order issued by such justice, whether in his presence or otherwise.

Punishment for contempt to be by fine or imprisonment.

SEC. 8. Punishment for contempt in all cases shall be by fine or imprisonment, or both, provided the fine shall in no case exceed fifty dollars, nor the imprisonment ten days, for any one offence.

Powers of justice.

SEC. 9. Every justice of the peace shall have power to issue *subpœnas* for witnesses in all cases or matters pending in any court in the territory, or before commissioners, arbitrators or referees, or before any other justice of the peace; and he shall have power to take depositions, to be used as evidence in any such courts or places as aforesaid, or to take the acknowledgment of deeds, powers of attorney or other instruments of writing, except where the lands conveyed lie out of the county of which he is such justice.

When vacating office to deposit all papers with tribunal clerk.

SEC. 10. Whenever a justice of the peace shall vacate his office by death, resignation, expiration of term, or otherwise, his docket, record books, papers and documents shall be by him or his legal representative deposited in the office of the clerk of the tribunal transacting county business, who shall receipt for the same, and such clerk shall immediately hand the same over to some other justice of the peace of the same township, filing the receipt of such justice in his office as a voucher; and such justice shall have full power and authority to consummate all unfinished business which may appear on such dockets, papers, books or documents, and to issue executions on all judgments of such former justice.

ARTICLE II.

Of jurisdiction and limits thereof; when co-extensive with county.

§ 1. Jurisdiction over certain actions.
2. No cognizance of action against executor, &c.
§ 3. Jurisdiction co extensive with county in certain matters.
4. Actions to be brought in the county, when.

SECTION 1. Justices of the peace shall have jurisdiction over the following actions and proceedings: *First*, actions of debt, covenant and assumpsit, and all actions founded on contract when the debts or balance due, or damages claimed, exclusive of interest, shall not exceed one hundred dollars; *second*, actions of trespass and trespass on the case for injuries to persons or personal property, wherein the damages claimed shall not exceed fifty dollars; *third*, all actions for any penalty not exceeding one hundred dollars, given by any statute of this territory; and, *fourth*, at all times, whether at his regular law days or at any other time, to take and enter judgment by confession, in any action, matters properly cognizable before him; *provided*, that in all confessions of judgment before a justice of the peace, the party so confessing shall appear in proper person before such justice and make his confession orally or in writing, the account or instrument upon which the claim is founded being filed before the justice, and the justice shall thereupon enter up on his docket a judgment upon such confession for the amount so confessed, together with costs, and award thereof execution as upon a finding in other cases. Jurisdiction over certain actions.

SEC. 2. No justice of the peace shall have cognizance of any action against any rightful executor or administrator as such, or any corporation, nor of any action of detinue, replevin, slander, malicious prosecution or false imprisonment, or of any action where the title to lands or tenements shall come in question. No cognizance of action against executor, &c.

SEC. 3. Every justice of the peace shall have jurisdiction co-extensive with the county in which he is a justice, in all matters over which he has cognizance by law, and all writs by him issued may be served in any part of such county by the constable Jurisdiction co-extensive with county in certain matters.

of any township in the county; but all summons or original process shall be returned before the same justice of the peace in the township in which one or more of the defendants may be served, and such justice before whom the same is returned shall have full jurisdiction of the cause so returned before him, and may proceed to try the same as if he had issued such summons or original process.

Actions to be brought in the county, when.

SEC. 4. All actions before a justice of the peace shall be brought in the county in which one or more of the parties shall reside, except where the defendant shall be a non-resident of the territory, then in any county where the defendant may be found; *provided*, that when several defendants live in different counties, counterpart writs may be directed to, and served in any county, in which a defendant may reside.

ARTICLE III.

Of the commencement of suits; service and return of process; of appearance and pleadings of parties; of adjournments; of witnesses and jurors; of executions and proceedings thereon, and of garnishments.

§ 1. To appoint a day in each month as a law day.
2. Account to be filed before law day; form of summons.
3. Justice to keep docket of all cases; registry of executions.
4. Suit may be tried by consent, without writ; liability, form.
5. Justice may appoint deputy constable, when.
6. May appoint person to summon jury, when.
7. Issue precept for jury; form of writ.
8. Who may conduct suits.
9. Infants may sue by next friend.
10. May appoint, when application is made.
11. Judgment given by default, when.
12. May enter judgment for plaintiff, when.
13. Enter judgment for defendant, when.
14. Course to be pursued when part of defendants not served.
15. Defendant may file set-off.
16. Offsets to be filed, when.
§ 17. Offsets by defendant to suit of executor, &c.
18. May continue the cause, when.
19. All demands to be joined in one action.
20. May compel attendance of witnesses.
21. May issue attachment for witness.
22. Juror subject to attachment and fine.
23. Transcript of judgment filed, to be a lien on real estate.
24. Execution to issue, when.
25. Justice to endorse on execution.
26. Constable not to purchase.
27. Demand to be filed with constable, when; form of demand.
28. Judgment to be in form.
29. Garnishee may make answer without appearance.
30. Issue, plaintiff may put in.
31. Constable to notify plaintiff of other claims.
32. Constable to sell, if plaintiff indemnifies.

To appoint one day in every month as law day.

SECTION 1. Each justice of the peace shall appoint one day in every month as his law day, to which day all summons and other process, not otherwise made returnable, issued by said justice, shall be returned, and all summons and other process shall be returnable, at the office of the justice issuing the same, at ten of the clock in the forenoon of that day; and all writs issued by any justice shall be by him attested, and shall run in the name of the territory of Kansas.

Writs to run in the name of territory of Kansas.

SEC. 2. In all suits brought before a justice of the peace, the account containing the items, or other instrument, upon which the action is founded, shall be filed before the justice at least five days before his next law day, and the first process thereon shall, except when otherwise provided by law, be a summons, which shall be in the following form: "The territory of Kansas, to the constable of —— township, in the county of ——, greeting: You are hereby commanded to summon to appear before me, a justice of the peace of —— township, in the county of ——, at my office in said township, at ten of the clock in the forenoon of the —— day of ——, A. D. 18—, then and there to answer the complaint of ——. Given under my hand, this the —— day of ——, A. D. 18—. ——— ————, J. P." Which shall be delivered to the constable of the proper township, and by him served by reading the same to the defendant, or by leaving a copy thereof at his usual place of abode, in the proper county, with some white member of his family, over the age of thirteen years, at least five days before the return day thereof; and such constable shall make a return thereon in writing, specifically stating the manner in which such summons was served.

Account to be filed before law day.

Form of summons.

SEC. 3. Every justice of the peace shall keep in his office a docket, in which he shall enter every case, with the appropriate title, upon the filing the instrument upon which the suit is founded; a judgment docket, in which he shall enter at each law day, or so soon thereafter as time will permit, all judgments by him rendered on that day, and all orders made thereon; and he shall also enter in such docket, in the interim of his law days, all trials and judgments had before him, civil or criminal, and all confessions of judgments, and all other matters which shall properly come before him for adjudication; and he shall also keep a registry of executions, which shall be ruled in columnar lines as follows:

Justice to keep docket of all cases.

Registry of executions.

Names of plaintiffs.	Names of defendants.							

SEC. 4. Any suit may be tried before a justice of the peace, by consent, by voluntary appearance without any writ, and all judgments and other proceedings, in such suits, shall be of as full force and binding effect as if instituted in the regular way; and when the plaintiff is a non-resident of the county, or is proven to

Any suit may be tried by consent, without writ.

When a justice may rule to give security.

be insolvent, the justice may upon motion, or at is own instance, or at the instance of any officer of this court, or witness in the cause, rule him to give security for costs, which security shall be by an undertaking in the following form, subscribed by some responsible person, resident of the county: "I am liable for all costs that have or may accrue in the cause of —— vs. ——, now pending before ——, J. P. of —— township, —— county, K. T. Witness this —— day of ——, A. D. 18—." Which undertaking shall be filed among the papers of the cause; *provided*, that a justice of the peace may permit any person, whom he deems upon competent evidence, either by his own oath or otherwise, to be unable to pay costs, to sue as a pauper, which permission he shall enter upon his docket of judgment, and in such case no security shall be required.

Form of liability.

When the justice may appoint a deputy constable, &c.

SEC. 5. When the constable is absent, or interested, or for any other cause cannot serve process from any justice of the peace in proper time, the justice may, upon the application of the plaintiff, deputize any discreet person to execute such process by endorsement on such process to the following effect: "At the risk and request of the plaintiff, I deputize A. B. to execute and return this writ. ——, A. D. 18—. ——, J. P." And such person so deputized shall make his return upon oath.

When the justice may appoint a person to summon jury.

SEC. 6. When the constable may be absent or disqualified from interest or other cause, or where either party may object to any constable summoning a jury in any cause before such justice, the justice may appoint some suitable person to summon such jury.

Upon demand justice to issue precept for jury.

SEC. 7. In all trials before a justice of the peace, upon the demand of either party, the justice shall issue a precept for a jury of six men, which writ may be in the following form: "The territory of Kansas, to the constable of —— township, —— county, K. T. You are hereby commanded to summon six good and lawful men, of —— county, to make a jury between, ——, plaintiff, and ——, defendant, because the parties have put themselves upon the country for trial; and that you return this writ, at my office, forthwith, with the jurors aforesaid. Witness my hand, this —— day of ——, A. D. 18—. A. B., justice of the peace."

Form of writ.

What persons may conduct sui

SEC 8. Any person, except an infant or person of unsound mind, may conduct his suit in prosecution or defence, either in person, or by agent, or attorney.

Infant may sue by next friend.

SEC. 9. Any infant or person of unsound mind may institute his suit by the interposition of a next friend, who shall be of lawful age, and free from all legal disabilities to sue.

Sec. 10. Whenever application is made to a justice of the peace, he shall, by a written instrument, appoint a next friend who shall be liable for all costs in the cause, which appointment shall be to the following effect: "I hereby appoint ——, next friend for ——, an infant (or person of unsound mind), in the prosecution of suit (brought on) to be brought before me, A. B., justice of the peace, against ——. Witness, this —— day of ——, A. D. 18—. A. B., justice of the peace." And the person so appointed next friend, shall endorse on said appointment as follows: "I accept the within appointment. C. D." And should any suit be instituted by any infant without such appointment, such suit shall not be dismissed if any person of lawful age will appear and accept the appointment of next friend, and such suits shall be conducted in the name of such infant, by his next friend.

When application is made, the justice may &c.

Sec. 11. If the defendant shall not appear on the return day of any writ of summons, or other process, which brings him to answer the action of the plaintiff, and make answer to the action of the plaintiff before the hour of one o'clock, judgment shall be given against him by default; and if the plaintiff's demand be liquidated, certain judgments shall be entered up for the amount appearing to be due; and if the plaintiff's demand be upon an account, or other unliquidated statement, the justice shall hear such evidence as shall be offered by the plaintiff, and give judgment for such sum as shall appear justly to be due; and if upon an unliquidated demand the plaintiff shall offer no evidence, upon such default the justice shall enter judgment for one cent and costs.

When judgment shall be given by default.

Sec. 12. If the plaintiff fail to appear and prosecute his action, and the demand be liquidated and certain, the justice shall enter judgment for the plaintiff for such sum as may appear to be due upon the default of the defendant; or if the defendant appear and defend the same, the justice shall give judgment for such sum as he shall find to be due, or such other judgment as may be right and just between the parties.

When justice may enter judgment for plaintiff, &c.

Sec. 13. If the plaintiff fail to appear and prosecute his suit, when the action is upon an account, or other unliquidated claim, whether the defendant appear or not, the justice shall enter against the plaintiff a judgment of non-suit, unless the defendant appear and acknowledge the justness of the plaintiff's demand, in which case the justice shall give judgment for the account so confessed.

When justice may enter judgment against the plaintiff, &c.

Sec. 14. Where a part of the defendants are served and a part not served with process, the plaintiff may elect to dismiss as

When part of defendants not

served, course to be pursued.

to such not served, and may proceed against those served, or may take an *alias* writ against the defendants not served with process, and the cause may stand continued, from time to time, until all the parties shall be served or brought into court; and if the plaintiff in such case does not appear, the justice shall award an *alias* writ against the parties not served, and continue the cause; but if at the second law day the defendants are not all served with process, the plaintiff shall proceed against those who are served, or his cause shall be dismissed, unless, by the consent of the defendants served, it may stand continued.

Defendant may file set-off.

SEC. 15. The defendant may file his set-off against the plaintiff's demand, and in such case the judgment shall be for such amount, for either the plaintiff or defendant, as may be right and just between the parties; or if the claims of the parties be found to be equal, the judgment shall be that each party pay one-half the costs; *provided*, that the plaintiff shall, in all cases, be responsible for the costs which may accrue in the cause, and, *provided*, that no offset shall be filed which shall exceed the jurisdiction of the justice, nor shall unliquidated damages be the subject of offset, or subject to offset.

Offsets to be filed, when.

SEC. 16. All offsets must be filed before the jury is sworn, or before the cause is fully submitted to the court for trial.

Offsets to be filed by defendant to suit of executor, &c.

SEC. 17. When suit is brought before a justice of the peace by an executor or administrator, for any amount due the deceased in his life-time, it shall be competent for the defendant to file an offset to any amount which the deceased in his life-time owed such defendant; *provided*, that if the offset exceed the claim, judgment may be given then only to the amount of the plaintiff's claim, and the residue of such offset shall be the subject of consideration for the probate court.

When the justice may continue cause.

SEC. 18. A justice of the peace may, upon the application of either party, upon good cause shown, continue a cause until his next law day; but before such continuance is granted, the party making such application shall state under oath, either in writing or verbally, that he does not make such application for vexation or delay, but that justice may be done him; and if application is made on account of the absence of testimony, he shall state what means he has used to procure such testimony, and that the same is not absent with his consent, or by his covenant or agreement, and that he has good reason to believe that he can procure the same by the next law day, or some subsequent time to be specified; *provided*, that the consent of parties to any cause may stand continued at any time, but a continuance shall only be from one law day until the next.

All demands to be joined in one action.

SEC. 19. All demands against the person in the same right, sued on at the same time, shall be joined in one action, unless the joint causes of action exceed the jurisdiction of the justice, and there shall be only so many suits brought at the same time between the same parties, and before the same court, as shall be necessary to prevent an excess of the jurisdiction of the court; and all suits pending in the same court at the same time, and between the same parties, and in the same rights, being reduced into one or more by motion to consolidate, and the costs in such case shall abide the event of the suit or suits.

Justice may compel attendance of witnesses.

SEC. 20. A justice of the peace may compel the attendance of witnesses anywhere within the county in which the subpœnas are issued, or anywhere within twenty miles of the justice's place of holding court; and all witnesses before justices' courts shall be summoned as provided by the general law on that subject.

Justice may issue attachment for witness.

SEC. 21. If a witness fail to appear in obedience to the command of the writ, the justice may issue an attachment, made returnable forthwith, which shall be served upon the witness by arresting him and taking him before such justice at the earliest practicable time; and the justice shall have power, in his discretion, to fine such witness for contempt in any sum not exceeding the amount in controversy between the parties, nor shall such fine exceed the sum of ten dollars; but for a second refusal to to obey a writ of subpœna, the justice may, in his discretion, commit the witness to jail until he shall have given security, in double the sum in controversy, conditioned that he will appear in such justice's court at such time as such justice may designate.

Juror subject to attachment and fine

SEC. 22. Every juror who shall fail to appear when duly summoned as such, shall be subject to attachment and to fine for contempt of court.

Transcript of judgment filed in office of clerk, to be a lien upon real estate.

SEC. 23. A full transcript of a judgment before a justice of the peace, filed in the office of the clerk of the district court, or any other court having cognizance of appeals from justices' courts, in the county in which lands of the defendant may lie, shall, from the time of such filing, be a lien upon the real estate of the said defendant, throughout said county; and upon the filing such transcrip in the office of the clerk of the district court, the clerk of the court to which appeal will lie shall record the same in the record of the judgments of such court; and when it shall appear that an execution has issued from the justice's office on said judgment, and has been returned no property found or not sufficient to satisfy the same, the said clerk shall, upon the application of the party interested, issue on said judgment a writ of execution, reciting the date of the judgment before the justice, the date of filing the transcript, and the fact in general terms, that an execution issued from the office of the justice of the peace, and was returned no property found, or not sufficient to satisfy such judgment, and commanding the officer as in all other writs of execution.

When execution to issue, &c.

SEC. 24. Whenever a justice of the peace shall have rendered a judgment, he shall immediately, unless otherwise ordered by the plaintiff, issue an execution thereon in the following form: "The territory of Kansas, to the constable of —— township, in —— county, Kansas territory, greeting: Whereas, on the —— day of ——, A. D. 18—, before ——, J. P. of —— township, in —— county, of Kansas territory, —— against —— hath recovered judgment for $ ——$_{100}$ dollars for his debt and damages, (or damages) and also for $ ——$_{100}$ dollars for his costs; we therefore command you to levy the same of the goods and chattels of the said —— according to law, and that you return this writ to said justice at his law day on the —— day of ——, A. D. 18—. Witness my hand, this —— day of ——, A. D. 18—. ——, J. P." All amounts specified in such execution may be in figures, designated by the usual dollar mark; the writ shall be dated on the day of its issue, and if for a sum not exceeding seventy-five dollars exclusive of interest and costs, it shall be returned in sixty days from its date; and if for a sum above seventy-five dollars, it shall be returned in ninety days from its date; and such execution, if issued as much as fifteen days before any law day, shall be made returnable at the first law day of such justice thereafter, otherwise it shall be returnable at the next succeeding law day.

Justice to endorse on execution, &c.

SEC. 25. The justice shall endorse on the back of every execution, as follows: "——, plaintiff, vs. ——, defendant. Debt $——; damages $——; justices' costs $——; constable's costs $——; witnesses' fees (if any) $——; justice's fees (if any) $—— (and any other costs that may have accrued)." And upon the delivery of such execution to the constable added up, he shall endorse thereon the date of its coming to his hands, and it shall be a lien upon the personal property of the defendant, from the day it came into the hands of such constable, throughout the county; and the constable shall proceed to levy upon the property of the defendant in the execution and advertise the same for sale, by five written or printed handbills put up at five public places in the county or township in which the property may be, at least five days before the day of sale, which notice shall refer to the execution, describe the property to be sold, and specify the place and terms of sale; and, in pursuance of such levy and notice, shall proceed to sell such property at public auction to the highest bidder for cash; and the proceeds of such sale shall be applied, first, to the payment of the oldest executions in the hands of the officer, and all executions of the same date shall be paid *pro rata* in proportion to the amount.

Constable not to purchase.

SEC. 26. No constable or other officer charged with sale of property shall, directly or indirectly, purchase any property at any sale upon execution made by him, and all such purchases shall be absolutely void; and no constable shall sell property under execution unless there be present on the ground at least two persons competent to bid.

When a demand to be filed with constable; form of demand.

SEC. 27. When there is not sufficient property levied on to satisfy the plaintiff's execution, he may file with the constable a demand in the following form: "I command you to summon A. B. to appear before C. D., J. P. of —— township, in —— county, on the return day of an execution of E. F. vs. G. H., to answer such interrogatories as may be propounded to you touching your liability to the defendant. This —— day of ——, A. D. 18—. L. R., pl'ff (or att'y for pl'ff)." And the constable shall serve the same by reading to the person, mentioned in such demand, the execution, and demand that the person so summoned shall, on the return day of the execution, appear before the justice, and upon the plaintiff filing before the justice the following interrogatory: "At the time you were summoned, did you, or have you since, or do you now owe the defendant any money; or did you then, or have you since, or have you now in your possession or under your control, any property or effects of the defendant? if so, how much did you or do you now owe, on what account and when was it, or when will it become due, and what property or effects, and of what value? A. B., plaintiff (or attorney for plaintiff)." To which interrogatories the garnishee shall make his specific answer on oath; and if he refuse to answer or fail to appear, the justice shall give judgment by default for such sum as may appear from evidence adduced to be due from the garnishee to the defendant; or if no amount is proved to be due, then the judgment shall be for one cent and costs.

Judgment to be in form of answer.

SEC. 28. If the garnishee shall answer, the judgment shall be in accordance with the answer, except the truth of the answer may be put in issue.

Garnishee may make answer without appearance.

SEC. 29. Any garnishee may make his answer and send it in without making his appearance, which shall have the same effect as if he should appear in person and make his answer.

What issue plaintiff may put in.

SEC. 30. The plaintiff in an execution may put in issue the answer of a garnishee, as follows: "I deny the answer of ——, garnishee in this cause. A. B., plaintiff (or attorney for plaintiff)." And if the plaintiff in the execution shall show by competent testimony a different state of facts from that contained in the answer, the judgment shall be in accordance with the facts.

Constable shall notify plaintiff of any other claim of property, &c.

SEC. 31. If any person other than the defendant in an execution shall claim any property or effects levied on, by notice to the constable in writing, stating the nature of his claim, the constable shall notify the plaintiff in the execution by giving him a copy of the claimant's notice, and shall fix a day not exceeding five days from the time of his being notified aforesaid, and shall summon a jury of six men of the township, and the constable shall swear the jury to try the right of property between the parties, and the jury shall be judges of the law and the facts thus shown.

Constable to sell if the plaintiff indemnifies him.

SEC. 32. If the verdict of the jury shall be that the property in controversy belongs to the defendant in the execution, the verdict shall be a protection to the officer in selling; and if the verdict shall be in favor of the claimant, the constable shall nevertheless sell, if the plaintiff shall fully indemnify the officer by bond with sufficient security, in which case the claimant may maintain his action against the obligors in the bond, or may have his action against the officer at his election.

ARTICLE IV.

Of appeals, proceedings thereon.

§ 1. When person may appeal.
2. Appeal to be allowed, when.
3. Affidavit, &c., to be filed before appeal is granted.
4. Application for appeal before ten days.
5. Duty of justice when appeal is granted.
6. Appeal granted by successor, when office is vacated.
§ 7. Court may, by bill, order appeal to be sent up.
8. Cause to take same course as if anew.
9. Transcript to be filed, when.
10. Appeals tried by appellate court, when.
11. Judgment against appellant, also against security.

When persons may appeal.

SEC. 1. Any person aggrieved by the judgment rendered by a justice of the peace, except on a judgment by confession, may, in person, or by agent or attorney, make his appeal to the court having cognizance of appeals from justices of the peace of the same county where the judgment was rendered.

Time when appeal can be allowed.

SEC. 2. No appeal shall be allowed from a judgment of nonsuit, or by default, unless within ten days after the rendering of such judgment application shall be made to the justice, by the party aggrieved, to set the same aside, and such application shall have been refused.

SEC. 3. No appeal shall be granted by a justice, until the party applying therefor shall make his affidavit, stating that the party feels himself aggrieved by the judgment of the justice, and that the appeal is not demanded for vexation or delay, but that justice may be done in the premises; and also give bond, with one or more sufficient securities, to the following effect: "We, the undersigned, ——— as principal, and ———, as security, acknowledge ourselves indebted to ——— (the opposite party,) in the sum of ———, to be void upon the condition, that whereas ——— has appealed from the judgment of ———, a justice of the peace, in an action between ———, plaintiff, and ———, defendant: Now, if on such an appeal the appellant fail to recover against the appellee, (or fail to recover an amount greater than the amount recovered before the justice) then this obligation shall be and remain in full force, else to be void. Witness our hands and seals, this ——— day of ———, A. D. 18—. A. B. [seal.] C. D. [seal.]" *Provided*, that no appeal shall be dismissed for want of a bond or affidavit, or for want of a sufficient bond or affidavit, to be filed before a motion to dismiss be decided by court.

Affidavit, &c., to be made before appeal be granted.

SEC. 4. No appeal shall be allowed unless the same be applied for within ten days after the rendition of judgment; or when judgment is of non-suit, or by default, within ten days after the refusal of the justice to set the same aside.

Application for appeal to be made within ten days.

SEC. 5. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same, and immediately make an entry of such appeal being granted, in his docket; and if execution has been issued, the justice shall recall the same and shall give to the defendant in such execution a certificate; and the constable in whose hands such execution shall be, shall, if he has levied under such execution, release such levy upon the production of such certificate, and return such execution, endorsed with the proper facts.

Duty of justice when appeal is granted

SEC. 6. If the office of a justice of the peace should from any cause become vacated, between the date of the rendition of a judgment and the time within which an appeal can be granted, the appeal shall be granted by his successor in office within the time hereinafter limited for the granting of appeals, provided the party desiring to appeal shall apply for the same within ten days after such successor shall have been qualified, and the time betweeen the death of such justice and the qualification of his said successor shall not be completed.

When office is vacated, appeal may be granted by successor.

SEC. 7. If from any cause an appeal cannot be procured from a justice of the peace, by a party entitled thereto, within the

Court may order an appeal to be sent up by bill.

time specified, the court to which an appeal may be taken may order the appeal to be sent up by bill upon the justice or person in whose hands his docket may be, and may enforce such bill by attachment.

Cause to take same course as original cause.

SEC. 8. Upon an appeal in the court to which an appeal is taken, the cause shall take the same course as an original cause, and be tried anew upon its merits, and the same rules which govern justices' courts shall govern on such trial.

When transcript to be filed.

SEC. 9. The justice shall, on or before the first day of the term to which such an appeal is taken, file in the office of the clerk of said county a transcript of his docket in the cause; and all the papers filed therein, and all errors of the justice, may be amended, if there appears enough in the cause to amend by, and no cause shall be dismissed on account of any informality in the proceedings in the court below.

When appeals shall be tried by appellate court.

SEC. 10. All appeals allowed ten days before the sitting of the appellate court shall be tried at the first term; and in all appeals which may be taken after the day on which the cause was tried, the appellant shall give at least ten days' notice to the appellee of such appeal, and, in case such notice shall not be given, it shall be cause of continuance at the cost of the appellant.

Judgment agains appellant, to be against him and the security.

SEC. 11. All judgments against the appellant shall be against the appellant and the security in his appeal bond, jointly; and upon payment by any such security, he may upon motion, at the same term, or upon three days' notice at any time thereafter, take judgment against the appellant, or any co-security who fails to pay his portion; if against the appellant, for the amount so paid; or against the co-securities, for his proportion of the amount so paid, with lawful interest thereon.

This act to take effect and be in force from and after its passage.

CHAPTER 94.

JUSTICES—BREACHES OF THE PEACE.

An Act to define the duties of justices of the peace in cases of breach of the peace.

§ 1. Assaults and batteries not indictable, but cognizable before justices of the peace.

§ 2. Certain offences not cognizable before justices of the peace, but shall be punishable by indictment.

§ 3. On complaint made justice to issue warrant for offences cognizable before him; by whom to be executed.
4. Offences in the last section committed within the knowledge of justice, warrant to issue; proceedings; when such offences committed in his presence, how to proceed.
5. Justice to hear and determine the complaint in a summary way.
6. Trial may be postponed by justice; defendant to give recognizance; condition thereof.
7. Failing to give recognizance, to be committed to jail.
8. Breach of recognizance to be certified to district court.
9. If offence not cognizable before justice, to proceed as in criminal cases.
10. Injured party to be summoned and others who may be material witnesses on the trial.
11. Trials to be by jury; fine not less than $1, nor more than $100.
12. Name of injured party to be entered as prosecutor, when.
13. Judgment to be entered for fine and costs, when. Commitment. Execution.
14. Defendant, after ten days, may take the benefit of the insolvent debtor's act. Costs, how paid, &c.
§ 15. Appeals may be taken; affidavit to be filed; recognizance to be entered into, and how.
16. Appeals, when to be returned.
17. When appeal is perfected, witnesses to be recognized; duty of justice to certify proceedings, &c.
18. Cause, when to be tried by the district court.
19. Appeals to be taken, when.
20. If judgment be affirmed, &c., judgment to be for fine and costs in both courts, &c.
21. Execution from district court, when to issue; out of what property to be satisfied.
22. Proceedings, how regulated.
23. Justice to certify the amount of fine to county treasurer; duty of the county treasurer, constable and county tribunal in such cases.
24. Penalty on officers refusing to perform duties required by this act, also on persons refusing to aid in arresting offenders.
25. Fines, &c., how recovered.
26. When justice continues a cause, witnesses present need not be summoned, but may be verbally notified to attend.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Justices shall have jurisdiction in all cases of assault and battery. Proviso.

SECTION 1. Justices of the peace may have jurisdiction of all cases of simple assault and battery, and affrays; *provided*, however, that nothing herein contained shall be construed to extend to cases of assault and battery and affrays which, by any of the laws of this territory, are punishable by imprisonment, or where the damages alleged to have been sustained exceeds the sum of one hundred dollars; and *provided further*, that nothing herein contained shall prevent a prosecution of such assault and battery or affray by indictments in the courts of this territory having criminal jurisdiction.

Empowered to have offenders arrested.

SEC. 2. Said justices of the peace shall, and they are hereby authorized and empowered to cause to be arrested any person or persons charged with any offence against the peace or quiet of the county or neighborhood in which he may reside, for any assault and battery or affray, riots, row or unlawful assembly; and if the said justice, on a full examination of the matter before him, shall find that the offence is such as would subject the person or persons thus charged to imprisonment or fine exceeding one hundred dollars, he shall require such person or persons to give bail for their appearance at the next term of the court for the county in which the offence was committed having criminal jurisdiction.

On complaint made, justice to issue warrant for offences cognizable before him.

SEC. 3. Whenever a complaint shall be made to a justice of the peace, on the oath or affirmation of any person competent to testify against the accused, that an assault, battery, affray, or other breach of the peace, has been or is about to be committed, the justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be executed by the sheriff of the county or constable of the township, or by some competent person specially deputed by the justice for that purpose.

By whom to be executed.

Offences in the last section, committed within the knowledge of the justice, warrant to issue; proceedings.

SEC. 4. If any justice of the peace shall have personal knowledge that any of the offences mentioned in the last section are about to be committed, he shall issue his warrant and proceed as is directed in that section; and if any such offence is committed, threatened or attempted in his presence, he shall immediately arrest the offender or cause it to be done; and for this purpose no warrant or process shall be necessary, but the justice may summon to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid, the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice or any of his assistants in the performance of their duty.

Such offences committed in his presence, how to proceed.

Justice to hear and determine the complaint in a summary way.

SEC. 5. When any person shall be brought before a justice of the peace under the provisions of this act, it shall be the duty of the justice to hear and determine, in a summary mode, the complaint alleged against the defendant.

Trial may be postponed by justice; defendant to give recognizance; condition thereof.

SEC. 6. Upon good cause shown, the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into a recognizance with sufficient security, conditioned that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him.

Failing to give recognizance, to be committed to jail.

SEC. 7. If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the common jail of the county, there to remain until the day fixed for the trial of the complaint alleged against him.

Breach of recognizance to be certified to court.

SEC. 8. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the court having criminal jurisdiction, to be proceeded on according to law.

If offence not cognizable before justice, to proceed as in criminal cases.

SEC. 9. If, in the progress of any trial before a justice of the peace under the provisions of this act, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the court having criminal jurisdiction.

Injured party to be summoned, and others who may be material witnesses on the trial.

SEC. 10. In all cases arising under this act, it shall be the duty of the justice of the peace acting in the case to summon the injured party and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment, if necessary.

Trials to be by jury; fine not less than $1 nor more than $100.

SEC. 11. All trials before a justice of the peace under this act shall be by a jury of six competent men, who, if they find the defendant guilty, shall assess the fine to be paid by him, which shall not be less than one dollar nor more than one hundred dollars, according to the nature of the offence.

Name of injured party to be entered as prosecutor, when.

SEC. 12. When proceedings are commenced under the provisions of this act on the information or complaint of the injured party, his name shall be entered by the justice on his docket as prosecutor, and if the defendant shall be discharged or acquitted, the costs shall be paid by the county.

Costs, how paid,

Judgment to be entered for fine and costs, when

SEC. 13. In all cases of conviction under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

Commitment; execution.

Defendant, after ten days, may take the benefit of the insolvent debtor's act.

SEC. 14. Any defendant who shall be committed or taken in execution on such judgment may, at any time after ten days' actual imprisonment in jail, take the benefit of the laws for the relief of insolvent debtors, and on taking the oath and complying with the other requisitions of said law may be discharged, and in that case the county shall pay the costs of the prosecution and charges of imprisonment, and for the amount thereof shall be a privileged creditor of the defendant, entitled to be first satisfied out of his property and effects.

Costs, how paid, &c.

Appeals may be taken; affidavit to be filed, recognizance to be entered into and how.

SEC. 15. Any person convicted under this act may appeal to the court having criminal jurisdiction, if he shall, on the day of the rendition of the judgment, file an affidavit stating that he verily believes himself aggrieved by the verdict and judgment, and also enter into recognizance with sufficient securities, householders of the county, which recognizance shall be in the form and with the condition required in appeals from a justice of the peace in civil cases.

Appeals, when to be returned.

SEC. 16. All appeals taken ten days or more before any term of the court having criminal jurisdiction of the county, shall be returned to that term; but if taken within ten days next before the commencement of a term, shall be returnable to the second term.

When appeal is perfected, witnesses to be recognized; duty of justice to certify proceedings, &c.

Sec. 17. When an appeal is taken and perfected according to this act, it shall be the duty of the justice to cause all material witnesses to enter into a recognizance in the sum of fifty dollars each, conditioned for their appearance to testify in the cause at the term to which the appeal is returnable, and shall, on or before the first day of such term, file in the office of the clerk of the court having criminal jurisdiction a copy of the entries on his docket, with a copy of the process and affidavit of appeal, and the original recognizance of the defendant and witnesses duly certified.

Cause when to be tried by the court.

Sec. 18. The clerk of the court having criminal jurisdiction shall enter the cause on his docket, and if the appeal be regularly taken the cause shall be heard on the merits at the return term, unless good cause be shown for a continuance, and the costs in both courts shall abide the event of the trial in the court having criminal jurisdiction.

Appeals may be taken, when.

Sec. 19. All appeals may be taken at any time within ten days after the day of trial before the justice.

If judgment be affirmed, &c, to be for fine and costs in both courts, &c.

Sec. 20. If the judgment of the justice shall be affirmed, or upon a trial in the court having criminal jurisdiction the defendant shall be convicted and any fine assessed, judgment shall be rendered for such fine, and the costs in both courts, against the defendant and his securities.

Execution from court, when to issue; out of what property to be satisfied.

Sec. 21. If the judgment in the court having criminal jurisdiction be not satisfied in thirty days after the rendition thereof, execution may issue against the defendant and his securities for the fine and costs aforesaid, which shall be made out of the property of the defendant if sufficient thereof be found; if not, then out of the property of said securities.

Proceedings, how regulated.

Sec. 22. In all cases not specially provided for by this act, the process and proceedings before the justice shall be governed by the laws regulating proceedings in justices' courts in civil cases.

Justice to certify the am't of fine to county treasurer.

Sec. 23. It shall be the duty of the justice before whom any conviction may be had under this act, if there be no appeal, to make out and certify, and, within ten days after the date of the judgment, deliver to the treasurer of the county a statement of the case, the amount of the fine, and the name of the constable charged with the collection thereof; and the county treasurer shall charge the constable with the amount of such fine, and unless the same be paid into the county treasury within thirty days after the date of the judgment, the tribunal transacting county business shall, at the next term, ten days' notice being given to the con-

Duty of the county treasurer, constable and tribunal in such cases.

stable in default, render judgment against him for the amount due, and twenty per centum thereon; making, however, proper deductions for insolvencies; on which judgment execution shall be issued, and the proceeds paid into the county treasury.

Penalty on officers refusing to perform duties required by this act; also on persons refusing to aid in arresting offenders.

SEC. 24. Any justice of the peace, sheriff, coroner or constable who shall wilfully neglect or refuse to perform any duty enjoined on him by this act, shall be deemed guilty of a misdemeanor in office, and shall, moreover, pay the sum of fifty dollars; and any person who shall, when summoned to aid in arresting or securing an offender, refuse to give such assistance, shall pay five dollars.

Fines, &c., how recovered.

SEC. 25. Fines and penalties incurred under this act in cases not otherwise provided, may be recovered before any justice of the peace by action of debt.

When justice continues a cause, witnesses present need not be summoned, but may be verbally notified to attend.

SEC. 26. When a trial under the provisions of this act shall be continued by the justice, it shall not be necessary for the justice to summon any witnesses who may be present at the continuance, but said justice shall verbally notify such witnesses, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

This act to take effect and be in force from and after its passage.

CHAPTER 95.

LANDLORDS AND TENANTS.

An act concerning landlords and tenants.

§ 1. Executor or administrator of tenant for life, may recover rents; when.
2. Remedy by action, &c., for the rents dependant upon life of another.
3. Free-hold estate in rents in right of the wife, may be recovered after her death as though she were living.
4. Remedy for rents in arrear, upon lease for life.
5. Remedy of executor or administrator, the same as the person deceased, for rents due at the time of his death.
6. Tenant in possession served with summons in ejectment, to give notice to landlord, &c.; penalty for failure.
7. Tenant giving notice of intention to quit, and failing to do so, liable for double rent.

§ 8. Double rent in such case, how and when to be recovered.
9. Tenants or persons holding under them, after the termination of their term, and after demand and notice given, liable for double rent.
10. No relief in equity against any recovery had under the preceding section.
11. Attornment of a tenant to a stranger void, except in certain cases.
12. Landlord may recover in an action on the case for use and occupation, under an agreement not made by deed.
13. If a parol demise, &c., appear on the trial of such action, to be evidence of the amount of damages to be recovered.

§ 14. Landlord has a lien upon the crop grown, &c., upon the premises for the rents; lien to continue for eight months.
15. Ejectment may be brought if half year's rent be in arrear, and landlord have a right to re-enter.
16. Summons in such action, how it may be served.
17. Service of the summons shall stand instead of a demand for the rent, and of a re-entry on the premises.
§ 18. Recovery of the demised premises and costs, when.
19. If before judgment in such action the rent and all costs be tendered, &c., further proceedings to cease.
20. If rent and costs be unpaid for six months after writ of possession executed, and no bill filed for relief, &c., lessee barred.
21. Provision and reservation in favor of mortgagees of lease in such cases.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Executor or administrator of tenant for life, may recover rents, when

SECTION 1. The executors or administrators of any tenant for life who shall have demised any lands or tenements so held, and shall die on or before the day when any rent, on such demise, shall become payable, may recover, *first*, if such tenant for life die on the day, the whole rent; *second*, if he die before the day, such proportion of the rent as shall have accrued before his death.

Remedy by action, &c., for rents dependant upon the life of another.

SEC. 2. Every person entitled to any rents, dependant upon the life of any other, may, notwithstanding the death of such other person, have the same remedy, by action, for the recovery of all arrears of such rent as are due and unpaid, at the death of such other person, as he might have had if such other person was in full life.

Freehold estate in rents in right of the wife, may be recovered after her death, &c.

SEC. 3. Every person having, in right of his wife, any freehold estate in any rents, may, if such rent is due and unpaid at the time of the wife's death, have the same remedy, by action, for the recovery of such arrears, as he might have had if the wife was in full life.

Remedy of rents in arrears upon lease for life.

SEC. 4. Any person having any rent due upon any lease for life, may have the same remedy, by action, for the recovery thereof, as if such lease were for years.

Remedy of executor or administrator, &c.

SEC. 5. The executors or administrators of any person to whom any rent shall have been due and unpaid at the time of the death of such person, may have the same remedy, by action, against the tenant, his executors or administrators, for the recovery thereof, that their testator or intestate might have had. (*a*)

Tenant in possession, served with summons in ejectment, to give notice to landlord, &c. Penalty for failure.

SEC. 6. Every tenant on whom a summons in ejectment, to recover the tenements held by him, shall be served, shall forthwith give notice thereof to the person, or the agent of the person, of whom such tenant holds, under the penalty of forfeiting

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(*a*) See Rector, administrator, vs. Rankin, 1 Missouri Rep, 371.

to such person the value of three years' rent of the premises occupied by him.

Tenant giving notice of intention to quit, and shall not deliver possession, liable for double rent.

SEC. 7. If any tenant shall give notice, in writing, of his intention to quit the premises held by him, at a time specified in such notice, and shall not deliver up the possession thereof at such time, such tenant, his executors or administrators, shall, from thenceforward, pay to the landlord, his heirs or assigns, double the rent reserved during all the time such tenant shall so continue in possession.

How and when to be recovered.

SEC. 8. Such double rent shall be recovered in the same manner, at the same time, that the single rent is recoverable.

Tenants, &c., after termination of their term, and after demand and notice, liable for double rent.

SEC. 9. If any tenant for life or years, or if any other person who may have come into the possession of any lands or tenements under or by collusion with such tenant, shall wilfully hold over the same after the termination of such term, and after demand made, and notice in writing given, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession double the yearly value of the lands or tenements so detained, for all the time he shall keep the person entitled out of possession.

No relief in equity, &c.

SEC. 10. There shall be no relief in equity against any recovery had at law under the preceding section.

Attornment to a stranger void, except in certain cases

SEC. 11. The attornment of a tenant to a stranger shall be void, and shall not in anywise affect the possession of his landlord, unless it is made, *first*, with the consent of the landlord; or, *second*, pursuant to, or in consequence of, a judgment at law, or a decree in equity; or, *third*, to a mortgage after the mortgage has been forfeited.

Landlord may recover in action on case for use and occupation, when.

SEC. 12. A landlord may recover, in an action on the case, a reasonable satisfaction for the use and occupation of any lands or tenements held by any person under an agreement not made by deed. (*b*)

If a parol demise, &c., appear on the trial, it shall be evidence of amount, &c.

SEC. 13. If a parol demise, or other agreement not by deed, by which a certain rent is reserved, appears in evidence on the trial of such action, the plaintiff shall not on that account be debarred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

Landlord has a lien upon the crop grown, &c.

SEC. 14. Every landlord shall have a lien upon the crop grown on the demised premises in any year, for the rent that shall accrue for such year, and such lien shall continue for eight months after such rent shall become payable, and no longer. (*c*)

(*b*) Garvey vs. Dobyns, 8 Missouri Rep., 213; McFadin vs. Rippey, 8 Missouri Rep., 738.

(*c*) The right of distress for rent does not exist in this state; Crocker vs. Mann, 3 Missouri Rep., 331.

Ejectment may be brought, when.

SEC. 15. Whenever a half year's rent, or more, is in arrear from a tenant, the landlord, if he has a subsisting right by law to re-enter for the non-payment of such rent, may bring an action of ejectment to recover the possession of the demised premises.

Summons in such action, how it may be served.

SEC. 16. If the summons, in such action, cannot be served in the ordinary mode provided by law, it may be served by affixing a copy of the declaration and summons on a conspicuous part of the demised premises where it may be conveniently read.

Service shall stand instead of a demand for rent and of a re-entry.

SEC. 17. The service of the summons in such action of ejectment shall be deemed and stand instead of a demand of the rent in arrear, and of a re-entry on the demised premises.

Judgment for recovery of demised premises and rent, when.

SEC. 18. If upon the trial of such action it is proved, or, upon judgment by default, it appears to the court, upon affidavit, that the plaintiff had a right to commence action according to the provisions of this act, he shall have judgment to recover the possession of the demised premises, and costs.

If there is a tender of rent and costs before judgment, proceedings to cease.

SEC. 19. If the defendant, before judgment is given in such action, either tenders to the landlord, or brings into the court where the suit is pending, all the rent then in arrear, and all costs, all further proceedings in the action shall cease.

Lessee, &c., barred from relief, when.

Landlord shall hold premises discharged of lease, when.

SEC. 20. If the rent and costs remain unpaid for six months after execution upon such judgment in ejectment is executed, and no bill for relief in equity is filed within that time, the lessee and his assigns, and all other persons deriving title under the lease from such lessee, shall be barred from all relief in law or equity, (except for error in the record or proceedings,) and the landlord shall, from thenceforth, hold the demised premises discharged from the lease.

Provisions and reservation in favor of mortgagees of lease in such cases.

SEC. 21. A mortgagee of such lease, not in possession of such demised premises, who, within six months after execution of any judgment in ejectment is executed, shall pay all rent in arrear, and all costs, and the charges incurred by the landlord, and shall perform all the agreements which ought to be performed by the first lessee, shall not be affected by the recovery in ejectment. (*d*)

This act to take effect and be in force from and after its passage.

(*d*) On the subject of landlords and tenants, see Stark vs. Miller, 3 Missouri Rep., 380; Tiernan vs. Johnson, et al., 7 *ibid*, 43; Gareeche vs. Boyce, 8 *ibid*, 228; O'Fallon, administrator, vs. Boismenu, 3 *ibid*, 286.

CHAPTER 96.

LAW—COMMON.

An Act adopting the common law as the rule of action in this territory.

§ 1. The common law and all English statutes.
2. Punishment only by fine and imprisonment.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Common law and certain British statutes are in force.

Section 1. The common law of England and all statutes and acts of parliament made prior to the fourth year of James the first, and which are of a general nature, not local to that kingdom, and not repugnant to or inconsistent with the constitution of the United States, and the act entitled "An act to organize the territory of Nebraska and Kansas," or any statute law which may from time time be made or passed by this or any subsequent legislative assembly of the territory of Kansas, shall be the rule of action and decision in this territory, any law, custom or usage to the contrary nothwithstanding.

Punishment limited.

British statutes, &c., not in force.

Sec. 2. Punishment by virtue of the common law shall in no-wise be other than fine and imprisment, and such fine shall not exceed one hundred dollars, and such imprisonment shall not exceed six months; nor shall any of the British statutes for the punishment of crimes and misdemeanors be in force in this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 97.

LAWS—TAKING EFFECT OF.

An Act regulating the authentication of statutes and the taking effect of laws.

Article I. Of authentication of statutes and bills not returned by the governor, how authenticated.
II. Repeal of and taking effect of laws.

ARTICLE I.

Of authentication of statutes and bills not returned by the governor, how authenticated.

§ 1. Statutes how authenticated, if the governor disapproves.
§ 2. Bills not returned by governor, how authenticated.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows :

Statutes how authenticated if the governor disapproves.

SECTION 1. When a bill that has passed both houses of the legislative assembly shall be returned by the governor without his signature and with objections thereto, and, upon a reconsideration, shall pass both houses by the constitutional majority, it shall be authenticated as having become a law by a certificate endorsed thereon, or attached thereto, in the following form : "This bill having been returned by the governor with his objections thereto, and after reconsideration having passed both houses by the constitutional majority, it has become a law this —— day of ——." Which, being signed by the president of the council and speaker of the house of representatives, shall be deemed a sufficient authentication thereof, and the bill shall be deposited with the laws in the office of the secretary of the territory.

Bills not returned by governor, how authenticated.

SEC. 2. Every bill which has passed both houses of the legislative assembly and shall not be returned by the governor within three days, having thereby become a law, shall be authenticated by causing the fact to be certified thereon by the president of the council and the speaker of the house of representatives, in the following form : "This bill having remained with the governor three days (Sundays excepted,) and the legislative assembly being in session, it has become a law, this —— day of ——. A. B., president of the council. C. D., speaker of the house of representatives."

ARTICLE II.

Repeal of and taking effect of laws.

§ 1. Law repealing a former law, being itself repealed, not to revive former law, &c.

§ 2. Laws hereafter passed when to take effect, &c.

Law repealing a former law being itself repealed, not to revive former law, &c.

SECTION 1. When a law repealing a former law, clause, or provision, shall be itself repealed, it shall not be construed to revive such former law, clause or provision, unless it be otherwise expressly provided ; nor shall any law repealing any former law, clause or provision, be construed to abate, annul, or in anywise effect any proceedings had, or commenced under, or by virtue of the law so repealed, but the same shall be as effectual, and be proceeded on to final judgment and termination, as if the repealing law had not passed, unless it be otherwise expressly provided.

Laws hereafter passed, when to take effect.

SEC. 2. All acts of the legislative assembly hereafter passed shall take effect at the end of the session at which they are passed, unless a different time is therein appointed.

This act to take effect and be in force from and after its passage.

CHAPTER 98.

LAWS—STATUTES.

An act concerning the statutes and legislative proceedings.

§ 1. Rules to be observed in the construction of the statutes.
2. Of original acts, &c.
3. Person appointed to furnish copies to printer.
4. General laws to be published in one volume; title.
5. What shall be published in said work.
6. Person appointed to copy, to be superintendent; his duties.
7. Power of superintendent.
§ 8. Secretary to certify, &c.; superintendent to certify, &c.; evidence.
9. What deemed necessary in publication.
10. Edition to be evidence in any court.
11. Laws to be distributed by secretary; who entitled to copies.
12. Secretary to deliver copies to certain persons, when.
13. Copy to be stamped, &c.
14. Copies remaining, disposition of.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Rules to be observed, &c.

First

SECTION 1. In the construction of all statutes, the following rules shall be observed, unless such construction shall be manifestly inconsistent with the intent of the legislature, or repugnant to the context of the same statute, that is to say: *First*—All words and phrases shall be construed and understood according to the approved and common usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. *Second*—Every word importing the singular number only, may extend and be applied to one person or thing, or several persons or things; and every word importing the masculine gender only, may extend and be applied to females as well as males. *Third*—All words purporting to give a joint authority to three or more public officers, or other persons, shall be construed as giving such authority to a majority of such officers or persons, unless it shall be otherwise expressly declared in the law. *Fourth*—The word "highway" may be construed to include any road laid out or established by the authority of the United States or of this territory, or of any town or county, and all bridges within the same. *Fifth*—The words "insane person" shall be construed to include every idiot, *non compos*, lunatic, and distracted person. *Sixth*—The word "issue," as applied to the descent of estates, shall be construed to include all the lawful lineal descendants of the ancestor. *Seventh*—The word "land" or "lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and interests therein. *Eighth*—The word "month" shall be construed to mean a calendar month unless otherwise expressed, and the word "year" a

Second.

Third.

Fourth.

Fifth.

Sixth.

Seventh.

Eighth.

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Ninth. Tenth. Eleventh. Twelfth. Thirteenth. Fourteenth. Proviso. Fifteenth.

calendar year unless otherwise expressed, and the word "year" alone shall be equivalent to the expression "year of our Lord." *Ninth*—The word "oath" shall be construed to include "affirmation" in all cases where by law an affirmation may be substituted for an oath, and in like cases the word "sworn" shall be construed to include the word "affirmed." *Tenth*—The word "person" may extend and be applied to bodies politic and corporate as well as to individuals. *Eleventh*—The words "preceding" and "following" shall be construed to mean the section next preceding or next following that in which such reference is made, unless some other section is expressly designated. *Twelfth*—The word "town" or "towns" may be construed to mean "city" or "cities," unless such construction would be expressly repugnant to the provisions of law relating to such cities. *Thirteenth*—The word "will" shall be construed to mean "codicil" as well as will. *Fourteenth*—The words "written" and "in writing" may be construed to include printing, engraving, lithographing, or any other mode of representing words or letters; *provided, however*, that in all cases when the written signature of any person is required by law, it shall always be the proper handwriting of such person, or, in case he is unable to write, his proper mark. *Fifteenth*—Every statute which does not expressly prescribe the time when it shall go into operation, shall take effect from and after the final adjournment of the legislature.

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Of original acts, &c.

Sec. 2. The original acts of the assembly shall be deposited, immediately after they shall have been passed, with and kept by the secretary of the territory, and shall be promulgated in the manner following, to wit:

Person appointed to furnish copies to printer, &c.

Sec. 3. The person appointed, by concurrent resolution of the two houses of this legislature, to copy the laws, and provide marginal notes and index to the same, shall, immediately after any general law shall have been deposited with the secretary of the territory, furnish a copy thereof to the person authorized to print the laws, who shall immediately publish the same in a newspaper printed at the seat of government of the territory.

General laws to be published in one volume.

Title.

Sec. 4. The several laws of general and permanent nature, passed at the present session of the legislative assembly, shall be published in one volume, to be designated the "Statutes of the Territory of Kansas," to be printed on good paper; and the standard of printing to be adopted in printing the said statutes shall be in comformity to the regular standard of printing; and the same shall be handsomely and substantially bound in calfskin, in the modern style of law-book binding; such edition shall consist of fifteen hundred copies, and shall be ready for distribution on or before the twenty-fifth day of October next after the passage of this act.

What shall be published in said work.

SEC. 5. The declaration of independence, the constitution of the United States and its amendments, the act organizing the territory of Kansas, the fugitive slave law, and such other acts of congress as relate to said territory, shall also be published and bound in the said statutes.

Person appointed to be superintendent; his powers, &c.

SEC. 6. The person appointed by concurrent resolution of this legislature shall superintend the publication of the statutes and shall arrange the order of publication; he shall prepare suitable marginal notes, examine and correct the proof sheets, and cause all clerical and typographical errors to be corrected so far as he may discover the same.

Power of superintendent.

SEC. 7. Such person so appointed may re-arrange the order of sections in any chapter whenever it shall not alter the intent and meaning of the law; he may also correct errors which may have occurred in numbering chapters and sections, and in any references made thereto; and words inserted or omitted in the enrolled acts, by mistake, may be omitted or supplied without brackets; but, in every such case, notes of such corrections shall be inserted at the end of the volume.

Secretary to certify, &c.

Superintendent to certify, &c

SEC. 8. The secretary of the territory is required to certify to correctness of the copies of the several chapters of the "statutes" to the said person so appointed; and he (the person appointed to superintend the publication of the laws) shall certify that the printed chapters and acts contained in the volume of the statutes are correctly published from such certified copies, with the exception of such corrections of clerical errors and mistakes as are authorized by this chapter to be made, which certificate shall be prefixed to the said statutes, and the same shall be sufficient authority to entitle the said statutes to be read in evidence in any court in this territory.

Evidence

What deemed necessary, &c.

SEC. 9. In preparing such edition, it shall only be necessary to place a general enacting clause at the commencement of the laws of the territory, and arrange the laws thereafter by their several chapters, articles and sections, without the signature of the presiding officers of the legislative assembly, and the approval thereof by the governor.

Edition to be evidence.

SEC. 10. Such edition, so prepared, shall be entitled to be read in evidence in any court of justice, or any other place where the laws of the territory may be required within this territory.

Laws to be distributed by secretary; who are entitled to copies.

SEC. 11. All laws hereafter to be printed by authority of this territory, shall be distributed by the secretary of the territory as follows: To the territorial librarian, for the use of the library, twenty copies; and for the following public officers, one copy each, namely: the governor, each member of the council and house of representatives, and the officers of the same; each of the judges of the supreme court; the United States district attorney; the marshal of the territory; attorney general; auditor of the territory; treasurer of the territory; each district attorney; judge of probate; the adjutant-general; quarter-master general; each county treasurer; each register of deeds; the board of commissioners in each county; notaries public; sheriffs; coroners; justices of the peace; clerk of the supreme court; clerks of the district courts; the delegate in congress; the secretary of the United States; the secretary of each state and territory of the Union, for the use of each state and territory; to the library of congress; *provided*, that no person who shall hold more than one of the above named offices, shall be entitled to more than one copy.

Secretary to deliver copies to certain persons, when.

Sec. 12. Whenever the printing and publication of the laws shall have been completed, the secretary of the territory, as soon as may be, shall deliver or transmit to the clerk of the tribunal transacting county business, in each of the organized counties, fifty copies thereof for distribution among the several officers of their respective counties, and of the counties thereto attached for judicial purposes; and it shall be the duty of the said clerk to keep a correct statement of the name and office of the several persons who may receive copies thereof, and also to take a receipt for the same when delivered. In case fifty copies shall not supply the officers authorized to receive a copy of the laws in any county, the clerk shall inform the librarian, who shall immediately forward the number to make up the deficiency.

Copy to be stamped.

Sec. 13. The copy delivered to any person shall have stamped or written thereon the name of the office held by such person, and shall again be deposited in the office of said register, on the expiration of his term of office, by the person to whom the same may have been delivered; and any person failing to deposit the said copy, in pursuance hereof, shall forfeit the sum of two dollars, to be recovered by the said register in his own name, by action of debt in any court of competent jurisdiction, for the use of the proper county.

Copies remaining, how disposed of.

Sec. 14. The several copies of the laws remaining after distribution among the several counties, as contemplated in this chapter, shall be deposited in the territorial library; and the librarian shall furnish each of the officers and persons, other than the county officers hereinbefore designated with a copy thereof, on demand, and shall take a receipt therefor when delivered.

This act to take effect and be in force from and after its passage.

CHAPTER 99.

LEGISLATIVE ASSEMBLY.

An act fixing the time of meeting of the legislative assembly.

§ 1. Shall meet at the seat of government.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

2d Monday in January, 1857.

SECTION 1. The legislative assembly of this territory shall meet at the seat of government, on the second Monday of January, in the year of our Lord one thousand eight hundred and fifty seven, and on the first Monday in every year thereafter.

This act to take effect and be in force from and after the adjournment of the present session of the legislative assembly.

CHAPTER 100.

EXPLANATORY ACT.

An act explanatory of an act to fix the times of meeting of the legislative assembly.

§ 1. Shall meet on the first Monday of January after 1857.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Explanatory.

SECTION 1. An act entitled "an act fixing the time of meeting of the legislative assembly," shall be so construed as to mean that the annual meeting of the legislative assembly, after the year eighteen hundred and fifty-seven, shall be on the first Monday in January.

This act to take effect and be in force from and after the adjournment of the present session of the legislative assembly.

CHAPTER 101.

CALLED SESSION.

An act relative to a called session of the legislative assembly.

§ 1. Session may meet at the seat of government or any other place.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Legislature may

SECTION 1. That in the event of a call session of the legismeet at seat of government or any other place.

lative assembly of the territory of Kansas, before the meeting of the next session of the legislative assembly, such session may meet at the seat of government or any other point in this territory, in the discretion of the governor at the time of calling such session.

This act to take effect and be in force from and after its passage.

CHAPTER 102.

LEGISLATURE—VACANCIES.

An act to provide for filling vacancies in the legislature.

§ 1. Resignation of members, how made; vacancies to be certified to the governor.
2. Governor to issue writs of election in all cases of vacancy.
3. Writs of election, how directed in certain cases.
§ 4. Election to supply vacancies, how held; duty of sheriff.
5. District or county altered or divided, and new district entitled to elect a member, in such case election to fill vacancy; in what district to be held.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Resignation of members how made; vacancy to be certified to the governor.

SECTION 1. If any member, elected to either house of the general assembly, shall resign in the recess thereof, he shall address and transmit his resignation in writing to the governor; and when any such member shall resign during any session, he shall address his resignation in writing to the presiding officer of the house of which he is a member, which shall be entered on the journals; in which case, and in all cases of vacancies happening or being declared during any session of the general assembly, by death, expulsion or otherwise, the presiding officer of the house in which such vacancy shall happen shall immediately notify the governor thereof.

Duty of governor in case of vacancy.

SEC. 2. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house during the recess, he shall, without delay, issue a writ of election to supply such vacancy.

Writs of election how directed in certain cases.

SEC. 3. When any vacancy shall happen in the council for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when such vacancy shall happen in a council district which shall have been divided or altered after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house for any county which shall have been divided after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

Election to supply vacancies, how held; duty of sheriff.

Sec. 4. The sheriff to whom any writ of election shall be delivered, shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be set up, and the election to be held accordingly in such parts of their respective counties as composed a part of the old county or district for which the election is to be held, at the last preceding general election; and the returns shall be made and the certificate of election granted in all things as if no division had taken place.

District or county divided, new district entitled to elect a member, &c.

Sec. 5. When any district or county shall be so altered or divided during the term for which a member shall be elected, and the new district or county shall be authorized to elect their member before the expiration of the term of the former member, in that case the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election.

This act to take effect and be in force from and after its passage.

CHAPTER 103.

LEGISLATIVE PROCEEDINGS.

An act authorizing the council and house of representatives to punish for contempt and for other purposes.

§ 1. Joint meetings to assemble in the hall of the house of representatives.
2. President of the council to preside, &c.
3. Punishment for disorderly conduct.
4. Guilty of disorderly conduct, to be taken into custody.
5. Proceedings when person is guilty, &c.
6. Depositions may be taken, &c.
7. Commissioners to take depositions.
8. Of writs, process, summons, &c.
§ 9. Of subpœnas for witnesses; how attested.
10. Fees to be allowed.
11. To be paid out of contingent fund.
12. Each house to control its own fund.
13. Joint expenses, how controlled.
14. Vote of majority necessary to an election.
15. Power to administer oaths, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Joint meetings to assemble in the hall of the house of Representatives.

SECTION 1. When, by the laws of this territory, a joint meeting of the council and house of representatives is required, they shall assemble with their clerks, on the day and at the hour previously agreed on for that purpose, in the hall of the house of representatives.

President of the council to preside, &c.

SEC. 2. When assembled, the president of the council shall preside, and such meeting shall be governed by such standing rules as shall have been adopted for that purpose by the concurrence of both houses; they shall have power to punish any person, other than a member, for disorderly or contemptuous behavior in their presence, by fine and imprisonment, in the same manner and to the same extent, as either house may do for the like conduct before them, by the laws of this territory.

Punishment for disorderly conduct.

SEC. 3. Any member of either house who shall be guilty of disorderly behavior in the presence of such meeting, may be punished by the house of which he is a member, in the same manner as if the offence were committed in the presence of such house.

Guilty of any disorder, to be taken into custody, &c.

SEC. 4. If any person, whether a member or not, shall be guilty of any disorder in the presence of either house, or a committee of the whole, or in joint meeting of both houses, while in session, the presiding officer of such house, or joint meeting or chairman of the committee of the whole, may order such person into immediate custody, and the sergeant-at-arms or the doorkeeper shall immediately take such person into custody and detain him until the further order of the house, joint meeting or committee of the whole, before which the offence was committed.

Proceedings when person is guilty of disorder, &c.

SEC. 5. If any person, whether a member or not, shall disturb the proceedings of any committee of either house, or be guilty of disorder in their presence, the house appointing such committee may punish such person as if the like offence were committed in the presence of such house; and if such offence be committed before a joint committee of both houses, the president of the council shall issue process, and both houses in joint meeting proceed thereon.

Depositions may be taken, &c.

SEC. 6. In cases not otherwise provided for by law, depositions may be taken and read in either house, or before a committee thereof, or before both houses on joint meeting, in all cases where the taking and reading depositions would be allowed in any cause pending before any court of law.

Commissions to take depositions.

SEC. 7. When necessary, the presiding officer of the house in which they are required, or of a joint meeting, may issue commissions to take such depositions as a court of law, and the proceedings in taking and returning depositions shall be the same as may be prescribed by law for taking depositions to be read in any court of law.

Of writs, process, summons, &c.

SEC. 8. Each house, or both houses in joint meeting, may cause to be issued necessary writs and process to summon and compel any person, charged with any offence whereof they have jurisdiction, to appear before them, or any committee thereof, and carry into execution their orders and sentences, and to summon and compel the attendance of witnesses, in as full a manner as any court of law and with like effect.

Subpœnas for witnesses.

SEC. 9. Subpœnas for witnesses shall be issued at the request of any member of either house, or the party accused, or any member of any committee; and all process awarded by the house of representatives, and subpœnas and other process for witnesses whose attendance is required therein or before any committee thereof, shall be under the hand of the speaker, and attested by the chief clerk, and shall be executed by the sergeant-at-arms, or a special messenger; and all such process awarded by the council, or in a joint meeting of both houses, shall be under the hand of the president, and attested by the chief clerk, and executed by their sergeant-at-arms, or a special messenger.

How attested

Fees to be allowed.

SEC. 10. Every witness attending either house, or a committee thereof, or a joint meeting of both houses, being summoned, shall have the same fees and traveling allowance as for the time being shall be allowed by law to witnesses for their attendance, to be paid as other costs.

To be paid out of contingent fund.

SEC. 11. The fees of all officers and witnesses before either house, or a joint meeting, and all other costs and expenses arising therein, shall be paid out of the contingent fund of the house in which the proceedings are had; or if had in joint meeting of both houses, then out of the contingent fund of the legislative assembly; unless the party charged be adjudged to pay the costs and expenses, in which case he shall pay them, and payment thereof may be enforced by execution.

Each house to control its own fund, &c.

SEC. 12. Each house shall control its own contingent expenses; and when any account, properly chargeable to the house of representatives, shall be adjusted and allowed according to the rules of that house, a certificate thereof shall be granted, signed by the speaker, and attested by the chief clerk; and when any account or demand for contingent expenses of the council shall be allowed according to the rules of that house, a certificate thereof shall be granted, signed by the president, and attested by the chief clerk.

Joint expenses, how controlled.

SEC. 13. All joint expenses shall be controlled by their concurrent vote, and shall be ascertained and adjusted according to their joint rules; a certificate thereof shall be issued, signed by the president and countersigned by the chief clerk of the council; and every such certificate shall specify the amount due, on what account, and the fund out of which it is to be paid; and the auditor of public accounts, on the delivery of such certificate to him, shall draw his warrant therefor accordingly, as in case of other demands against the territory.

Vote of majority necessary to a choice; certificate to be granted.

Sec. 14. In all elections made by either house, or by a joint vote of both houses, the votes of a majority of the members present shall be necessary to a choice: when such election shall be by joint vote, the president of the council shall grant the person elected a certificate, which, in all cases, where a commission is required, shall be sufficient to authorize the granting such commission.

Power to administer oaths, &c.

Sec. 15. The president of the council and speaker of the house of representatives may administer all oaths and affirmations to officers of their respective houses; and the president of the council, speaker of the house of representatives, a chairman of the committee of either house, or a chairman of any standing or select committee of either house, may administer oaths and affirmations to witnesses, in any case under their examination.

This act to take effect and be in force from and after its passage.

CHAPTER 104.

LIBRARY.

An act for the regulating and managing the territorial library.

§ 1. Auditor *ex officio* librarian.
2. Librarian shall have charge of books.
3. What books the secretary of the library shall deliver to him.
4. Shall arrange and keep books in order.
5. Shall open a correspondence to obtain proper books.
6. Secretary shall pay over to librarian all moneys, property, &c.
7. Librarian shall make and keep a catalogue.
8. Shall audit accounts of librarian.
§ 9. The auditor of public accounts shall audit.
10. Library shall be opened at suitable hours.
11. No persons but members of the legislative assembly to have books.
12. Duty of librarian when books are torn.
13. Penalty for violating this act.
14. Penalty for violating statute.
15. Compensation of librarian.
16. The librarian shall keep the library open during the session of the legislature.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. The auditor of public accounts shall be *ex officio* librarian of the territorial library, and shall have the custody of all books belonging to the same, and take special care that none of them be lost or injured.

Auditor to be librarian.

SEC. 2. The librarian shall have the custody, charge and safe-keeping of all papers, maps, charts, and all other things of what nature soever, properly belonging to the library, and shall take special care that none of them be lost or injured.

Librarian shall have charge of books.

SEC. 3. The secretary of the territory shall deliver to the librian, as soon as received by him, three copies of the following books, viz: The acts of each session of congress, the acts of the general assembly of this territory, the acts of the several states and territories, the journals of each house of the general assembly of this territory, and the decisions of the supreme court; also one copy of the journals of each house of congress, and of all books, reports, state papers and documents ordered by congress, or either house thereof, to be distributed among the states; which the librarian shall cause to be bound, if the same be not already done, and placed in the library.

Duty of the secretary of the territory.

What books shall be delivered to the librarian.

SEC. 4. The librarian shall cause all books now owned by the territory, and such as may hereafter be acquired, to be arranged and kept in some room in the capitol, and shall have the sole and entire control of said room, keep the key of the same, and see that it is kept clean of all other books and things, than those which properly belong to the library.

Librarian shall arrange and keep books.

SEC. 5. When there shall be a want of continuity in any of the series of acts, journals or other books required to be placed in the library, it shall be the duty of the librarian to open a correspondence with the proper person in order to obtain those which are wanting; and if they cannot otherwise be procured, he shall purchase the same and place them in the library.

Librarian shall open a correspondence to obtain books.

SEC. 6. When there shall be any money in the hands of the secretary of the territory, appropriated to the purchase of books for the territorial library, he shall pay over the same to the librarian, who shall give a receipt therefor, and, under the directions of the governor, shall apply the same to the purchase of all such books, maps or charts as he shall deem necessary and expedient, and shall provide presses for their safe-keeping.

Duty of secretary to pay over to the librarian all money that is appropriated for library.

SEC. 7. All books donated to or purchased by the territory shall be kept in the library, and it shall be the duty of the librarian to make a complete catalogue of all the books, maps and charts then in the library, and report the same to the legisla-

Catalogue to be made and kept.

tive assembly at the commencement of each session thereof, together with the manner and for what books the appropriations have been expended.

Expenses to be paid out of the contingent fund of the legislature.

Sec. 8. All expenses for procuring and binding such copies of acts and journals as are mentioned in this act, and the necessary expenses for stationery, candles and fuel, shall be paid out of the contingent fund of the legislative assembly.

Auditor shall audit accounts of librarian.

Sec. 9. The auditor of public accounts shall audit the accounts of the librarian under this act, and draw warrants on the treasurer for the payment of the same.

Opened at.

Sec. 10. The library shall, at suitable hours, be open for the reception of all persons who may wish to use the books therein; but no book shall be taken from the room unless by members of the legislative assembly, or when they are required to be used by the supreme court.

Members of legislature to use books.

Sec. 11. No officer or person, except members of the legislative assembly, during the session thereof, shall take any book from the library room under any pretence whatever, and no member of the legislative assembly shall take a book therefrom without first giving his receipt for the same to the librarian.

Receipt for same.

Duty of librarian when books are lost.

Sec. 12. It shall be the duty of the librarian, at least six days before the close of the session of the legislative assembly, to deliver, in writing, to the auditor of public accounts the name of each member who has taken a book from the library, and has not returned the same, together with the title of the book and the value thereof, as nearly as he can ascertain the same; and it shall be the duty of the auditor to deduct from the wages of such member treble the value of said book, to be applied, first, to replace the book not returned, and the balance to the use of the library.

Auditor shall draw warrant on the treasurer for wages of librarian.

Sec. 13. The auditor shall draw his warrant on the treasurer in favor of the librarian for the amount of wages deducted under the preceding section, and shall charge him with the same.

Penalty for violating this act.

Sec. 14. If any person shall violate the provisions of this act, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value of any book taken from the library, or of the set to which it belongs; to be recovered by an action for debt, in the name of the librarian, for the use of the library, in any court having jurisdiction thereof.

Compensation of librarian.

Sec. 15. The librarian shall receive, as a compensation for his services as such, the sum of one hundred dollars, to be paid quarter-annually; and shall procure, when necessary, a suitable person to perform the duties of assistant librarian during the sitting of the legislature, and see that the library room is at all times properly warmed, lighted and prepared for the accommodation of the members of the legislature, and of such other persons as are permitted to use the same.

Library to be kept open.

SEC. 16. The librarian, during the session of each legislative assembly, shall keep the library open each day, from nine o'clock in the morning until five o'clock in the evening.

This act to take effect and be in force from and after its passage.

CHAPTER 105.

LOST MONEY AND GOODS.

An act respecting lost money and goods.

§ 1. Duty of persons finding lost money, goods, &c.
2. Justice to appoint appraisers.
3. Duty of appraisers
4. Justice to file list made by appraisers.
5. Finder to advertise, how and when.
§ 6. Proceedings, if no owner appear within forty days.
7. Owner may recover by action, when.
8. Finder failing to make discovery, penalty.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Duty of persons finding lost money, goods, &c.

SECTION 1. If any person find any money, goods, or other valuable thing, worth more than ten dollars, the owner of which is unknown, he shall, within ten days, make an affidavit before some justice of the peace of the county, stating when and where he found the same; that the owner is unknown to him; and that he has not secreted, withheld or disposed of any part of the same.

Justice to appoint appraisers.

SEC. 2. Such justice shall then, if necessary, summon three disinterested householders to appraise the same.

Duty of appraisers.

SEC. 3. Such appraisers, or two of them, shall make two lists of the valuation and description of such property, money, or other valuable thing, and sign and make oath to the same, and shall deliver one of the lists to the finder, and the other to the justice of the peace.

Justice to file list of appraisers.

SEC. 4. The justice shall file such list, and the finder shall transmit a copy of the same to the clerk of the tribunal transacting county business, in the county in which such money or goods were lost, within fifteen days.

Finder to advertise, how and when.

SEC. 5. The finder shall set up, at five of the most public places in the township or neighborhood, a copy of such valuation within ten days.

Proceedings if no owner appear within forty days.

Sec. 6. If no owner appear and prove the money or property within sixty days, and the value exceed twenty dollars, the finder shall within thirty days thereafter cause a copy of the description to be inserted in some newspaper in this territory for three weeks; and if no owner prove the property within one year after such publication, one-half of such property, after paying expenses, shall vest in the finder, and the other half shall be paid into the county treasury, to be used as a common school fund.

Owner may recover by action, when.

Sec. 7. If the finder fail to restore such money or property, or the appraised value thereof, the owner may recover the same by action in any court having jurisdiction.

Finder failing to make discovery, penalty.

Sec. 8. If any person find any money, property, or other valuable thing, and fail to make discovery of the same as required by this act, he shall forfeit to the owner double the value thereof.

This act to take effect and be in force from and after its passage.

CHAPTER 106.

MANDAMUS.

An act to regulate proceedings upon writs of mandamus.

§ 1. Return to be made to first writ.
2. Person suing or prosecuting the writ may plead to, or traverse the return.
3. Person making return may reply, take issue or demur.
4. Proceedings shall be had thereon, as in an action on the case for false return.
5. Issue to be tried in the court that issued the writ.
§ 6. Damages may be recovered.
7. Peremptory writ to issue.
8. Costs, how adjudged.
9. Recovery, a bar to further suit for making return.
10. Time allowed for making return and pleadings.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Return to be made to first writ.

Section 1. Where any writ of mandamus shall be issued out of any court in this territory, (*a*) directed and delivered to any person who, by law, is required to make return of such writ, such person shall make his return to the first writ of mandamus. (*b*)

(*a*) See sec. 3, art. v. of the constitution of the state of Mo.; Vernon & Blake vs. Boggs, 1 Missouri Rep., 116; Astor vs. Chambers, 1 Missouri Rep., 191; Byrne vs. Harbison, 1 Missouri Rep., 225; County of Boone vs. Todd, 3 Missouri Rep., 140; Dixon vs. Judge of the second judicial circuit, 4 Missouri Rep., 289; Duncan vs. Travis, 4 Missouri Rep., 369; St. Louis County Court vs. Ruland, 5 Missouri Rep., 268, 6 Missouri Rep., 44.

(*b*) Mullanphy vs. St. Louis county court, 6 Missouri Rep., 563.

Person suing the writ may plead to, or traverse the return.

SEC. 2. When any writ of mandamus shall be issued, and return shall be made thereto, the person suing or prosecuting such writ shall plead to, (*c*) or traverse all, or any of the material facts contained in such return.

Person making return shall reply, &c.

SEC. 3. The person making such return shall reply, take issue, or demur to the pleading of the party suing or prosecuting such writ.

Proceedings as in action on the case for false return.

SEC. 4. Such further proceedings shall be had therein for the determination thereof, and in such manner as might have been had, if the person suing such writ had brought his action on the case for false return. (*d*)

Issue, where tried.

SEC. 5. If any issue shall be joined upon such proceedings, the person suing such writ shall try the same in the court from which such writ of mandamus issued.

Damages may be recovered.

SEC. 6. In case a verdict shall be found for the person suing such writ, or judgment given for him on demurrer, or by *nil dicit*, or for want of a replication or other pleading, he shall recover his damages and costs in such manner as he might have done in an action on the case for a false return, and the same may be levied by execution as in other cases. (*e*)

Peremptory writ may issue.

SEC. 7. A peremptory writ of mandamus shall be granted, without delay, for him for whom judgment shall be given, as might have been, if such return had been adjudged insufficient.

Costs, for whom adjudged.

SEC. 8. In case judgment shall be given for the person making the return to the writ, he shall recover his costs of suit, to be levied by execution as in other cases.

Recovery a bar to further suit for making return.

SEC. 9. If any damages shall be recovered, by virtue of this act, against any person making return to such writ, he shall not be liable to be sued in any other action or suit for making such return.

Time allowed for making return or pleadings.

SEC. 10. The court issuing any writ of mandamus may allow to the person to whom such writ shall be directed, or other person, who shall sue or prosecute the same, such convenient time, respectively, to make return, plead, reply, rejoin or demur, as to the court shall seem just and reasonable.

This act to take effect and be in force from and after its passage.

(*c*) The relator may demur to the return of the writ; Johns. Rep., 61.

(*d*) See section 10, art. v., of the act to regulate practice at law.

(*e*) The remedy, before the statute, for a false return to a writ of mandamus was an action on the case; Selwyn's Nisi Prius, 1115. The statute does not take away the remedy by action on the case, except when damages are recovered by virtue of the statute. *Ib.* Buller's Nisi Prius, 203. See sec. 9 of this act.

CHAPTER 107.

MARRIAGE CONTRACTS.

An act concerning marriage contracts.

§ 1. Contracts to be in writing, sealed and acknowledged or proven.
2. Contracts of females.
3. How acknowledged or proved and certified.
4. To be recorded, where.
5. When deposited for record, shall impart notice.

§ 6. No marriage contract shall be valid, or affect third persons, until delivered for record.
7. If duly authenticated shall be received in evidence.
8. If lost, a certified copy shall be evidence.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

To be in writing, sealed and acknowledged, or proven.

SECTION 1. All marriage contracts (*a*) whereby any estate, real or personal, in this territory, is intended to be secured or conveyed to any person or persons, or whereby such estate may be affected in law or equity, shall be in writing, sealed and acknowledged by each of the contracting parties, or proved by one or more subscribing witnesses.

Contracts of females valid and binding.

SEC. 2. Any female over the age of eighteen years shall have full power to make any written marriage contract concerning any real or personal property, or any other matter, with the consent of her father, if living; but if dead, then with the consent of her mother, if living; and if she be dead, then with the consent of her guardian; and such marriage contract, so made, shall be as valid and as binding on such female and her heirs, and all persons claiming under her, as if she had been over the age of twenty-one years at the time of executing the same.

How acknowledged, or proved, and certified.

SEC. 3. All marriage contracts shall be acknowledged or proved before a court of record, or some justice, judge or clerk of a court of record, of the state or territory in which the contract is executed, or before a justice of the peace in the county where the parties reside, which acknowledgment or proof shall be taken and certified in the same manner as deeds of conveyance for land are or shall be required by law to be acknowledged or proved and certified.

To be recorded, where.

SEC. 4. When any such marriage contract shall be acknowledged or proved, it shall be recorded, with the certificate of proof or acknowledgment, in the office of the recorder of every county in which any estate in the county thereby intended to be conveyed or affected shall be situated, or may be found.

(*a*) *Vide*, Pratte vs. Wright, 5 Missouri Rep., 192; Green vs. Spencer, 3 *ibid*, 319; M'Nair vs. Dodge, administrator, 7 *ibid*, 404.

SEC. 5. When any such marriage contract is deposited in the recorder's office for record, it shall (as to all property affected thereby in the county where the same is deposited) impart full notice to all persons of the contents thereof.

When deposited for record, shall impart notice.

SEC. 6. No such marriage contract shall be valid or affect any property, except between the parties thereto, and such as have actual notice thereof, until it shall be deposited for record with the recorder of the county wherein such property is situated or may be found.

Shall not affect third person until delivered for record.

SEC. 7. Such marriage contracts, duly proved or acknowledged, certified and recorded, shall be received in evidence in any court of this territory, without further proof of their execution.

If duly authenticated, shall be received in evidence.

SEC. 8. When it shall appear to the court that such marriage contract, duly acknowledged or proved, and recorded, is lost, or is not in the power of the party wishing to use it, a copy thereof, duly certified under the hand and seal of the recorder, may be received in evidence.

If lost, a certified copy shall be evidence.

This act to take effect and be in force from and after its passage.

CHAPTER 108.

MARRIAGES.

An act regulating marriages.

§ 1. Marriage in law a civil contract.
2. In what degrees marriage declared incestuous and void.
3. Marriage of white person with mulatto or negro, illegal and void.
4. Penalty on persons solemnizing marriage contrary to law.
5. Marriages without the territory if valid when contracted, to be valid, when.
6. Who may perform ceremony of marriage.
7. Minors not to be married without consent of parent or guardian.
§ 8. Certificate of consent to be registered; penalty.
9. Record of marriage to be kept, &c.; penalty.
10. Recorder to register certificate; fees; penalty.
11. Religious societies may solemnize marriage, how.
12. What marriages declared valid.
13. Record of marriage and certified copies, evidence.
14. Penalty for making false return or false entry of marriage, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Marriage is in law considered as a civil contract, to which the consent of the parties, capable in law of consenting, is essential.

Marriage in law, a civil contract.

SEC. 2. All marriages between parents and children, including grand parents and grand children of every degree, between

In what degrees, marriage declared

incestuous and void.

brother and sister, of half as well as of the whole blood, between uncles and nieces, aunts and nephews, between step-father and the daughter of his deceased wife, or between the step-mother and the son of her deceased husband, shall be and are hereby forbidden, and are declared to be incestuous and void. This section shall extend as well to illegitimate as to legitimate children and relations.

What marriages declared void.

SEC. 3. All marriages of white persons with negroes or mulattoes are declared to be illegal and void.

Penalty of persons for solemnizing marriage contrary to law.

SEC. 4. Whoever shall contract marriage in fact contrary to the prohibitions in the two sections next preceding, and whoever shall solemnize any such marriage, shall be deemed guilty of a misdemeanor of an infamous character, and shall, upon conviction, be punished by fine or imprisonment, or both, at the discretion of the jury who shall try the cause; or if the conviction be by confession or on demurrer, at the discretion of the court.

Marriage without the territory, valid.

SEC. 5. All marriages contracted without this territory, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places within this territory.

Who may perform ceremony of marriage.

SEC. 6. Every judge and justice of the peace, and every licensed or ordained minister of the gospel, may perform the ceremony of marriage in this territory.

Minors not to be married without consent of parent or guardian.

SEC. 7. No judge, justice of the peace, preacher of the gospel, or other person, shall join in marriage any male under the age of twenty-one years, or female under the age of eighteen, unless the parent or guardian, or other person under whose care and government such minor may be, shall be present and give consent thereto; or unless the minor applying shall produce a certificate in writing, under the hand of the parent or parents, or guardian, or if such minor has no parent or guardian, then under the hand of the person under whose care and judgment he or she may be, which certificate shall be proved to be genuine by the oath or affirmation of a person of full age and discretion, who was present at the signing of the same, and affixed his or her name thereto.

Certificate of consent to be registered, &c.

SEC. 8. Any person who shall marry any minor, by virtue of a certificate proved as above, shall register the same in a book to be by him kept for that purpose, and within three months shall transmit the certificate to the recorder of the county in which the marriage was solemnized, to be filed and recorded in his office; and if any such person shall join in marriage any minor without first having such certificate, or the presence and consent of the parent or guardian, or other person having the care and government of such minor, such person shall forfeit three hundred dollars, to be recovered with the costs of suit, by action of debt in any court having cognizance thereof, by the parent, guardian or person having charge of such minor, the one-half of the said forfeiture to the use of common schools, and the other half to the use of the person who shall prosecute the same; and shall also be subject to indictment in the proper county, and on conviction, be imprisoned in the county jail not exceeding six months nor less than one month.

Penalty.

Record of marriage to be kept and certified.

SEC. 9. Every person having authority to join others in marriage, shall keep a record of all marriages solemnized by him, and within three months transmit a certificate of any marriage (containing both christian and surname) to the recorder of the county in which the marriage took place; and if any person shall neglect or refuse to make return of all the marriages solemnized before him, within the time above required, he shall, for every offence, forfeit the sum of fifty dollars, to be recovered with costs by the recorder, or any person who will prosecute for the same, by action of debt in any court having cognizance thereof.

Penalty.

Recorder to register certificate; fee.

SEC. 10. The recorder of each county in this territory shall record all such returns of marriage in a book to be kept for that purpose, within one month after receiving the same, for which he shall receive for every entry fifty cents, to be paid by the person married, to the person who shall perform the ceremony, and by him transmitted to the recorder; and if such recorder shall refuse or neglect to record within the said time any such return to him made, he shall forfeit one hundred dollars, to be recovered with costs by any person who may prosecute for the same, by action of debt in any court having cognizance thereof, one-half to the use of common schools, and the other half to the use of the person who shall prosecute the same.

Penalty.

Religious societies may solemnize marriages, how.

SEC. 11. It shall be lawful for any religious society to join together in marriage such persons as are of the said society, according to the rites and customs of the society to which they belong: the clerk or keeper of the minutes, proceedings or other book of the religious society, wherein such marriage shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the recorder of the county a certificate of the marriage, and the same shall be recorded in like manner as is provided in the ninth and tenth sections of this law.

Marriage declared valid.

SEC. 12. All marriages which have heretofore been solemnized in this territory, are declared as valid and binding as if made in pursuance of this act.

Record of marriage, &c.

Sec. 13. The books of marriages to be kept by the respective recorders, and copies thereof certified by the recorder, with his official seal, shall be evidence in all courts.

Penalty for making false return, &c.

Sec. 14. If any person, authorized to solemnize any marriage, shall wilfully make false return of such marriage or pretended marriage to the recorder, or if the recorder shall wilfully make a false record of any return of a marriage to him made, such person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court.

This act to take effect and be in force from and after its passage.

CHAPTER 109.

MECHANICS' LIENS.

An act for securing liens to mechanics and others.

§ 1. Lien of artisans, builders, mechanics, &c., for materials and labor.
2. Within six months, an account on oath to be filed with the clerk of the district court.
3. Proceedings of sub-contractor to procure a lien.
4. Effect of certificate of settlement, and liability to sub-contractor.
5. Payment made by proprietor before filing settlement, valid; not liable to pay until the time of credit has expired.
6. Duty of clerk relative to liens filed in his office.
7. Proceedings against property bound by lien, and to obtain judgment; extent and effect of judgment and execution.
§ 8. Plaintiff to proceed by *scire facias*, against whom; judgment on *scire facias*.
9. *Scire facias*, how served.
10. Lien under this act to expire in twelve months, unless suit shall have been brought.
11. Sub-contractor to file a release, when.
12. Satisfaction of lien to be entered, when and how.
13. Forfeiture on creditor failing to enter satisfaction.
14. Land, not exceeding 500 square feet clear of building, subject to lien.
15. If title be incumbered, person who procures work done, considered the owner of the land to the extent of his right and interest.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Lien of artisans, builders, mechanics, &c., for materials and labor.

Section 1. That artisans, builders, mechanics, and those who furnish materials for buildings, under contract with the proprietor thereof, and all sub-contractors, shall have a lien for such materials furnished; and for work and labor done on houses and other edifices by them hereafter erected, in whole or in part, each artisan, builder, mechanic, laborer and sub-contractor, for his own work and materials furnished.

Within six months, an account on oath to be filed with the clerk of the district court.

SEC. 2. It shall be the duty of every person, except a sub-contractor, who wishes to avail himself of the benefits of this act, to file with the clerk of the district court of the county in which the building to be charged with the lien is situated, and within six months after the materials shall have been furnished, or the work and labor performed, a just and true account of the demand due him, after all credits are deducted; and he shall verify the said account by his own, or by the oath of some other person; and shall also file, at the same time, a correct description of the property to be charged with said lien.

Proceedings of sub-contractor to procure a lien.

SEC. 3. Every sub-contractor, wishing to avail himself of the benefits of this act, shall give notice, in writing, to the owner or proprietor, or his agent, of his intention to furnish materials for, or perform labor on the building, and the probable value thereof; and if afterwards materials are furnished, or labor done, the sub-contractor shall settle with the contractor therefor, and having made the settlement, in writing, the same, signed by the contractor and certified by him to be just, shall be presented to the owner or proprietor, or his agent, and left with him; and within ten days from the time the materials shall have been furnished, or the labor performed, the sub-contractor shall file with the clerk of the said court in the judicial district, in which the building is situate, a copy of the settlement between him and the contractor, which shall be a lien on the building for which the materials were furnished, or on which the labor was performed, and shall at the same time file a correct description of the property to be charged with the lien.

Effect of certificate of settlement and liability to subcontractor.

SEC. 4. The certificate of settlement, made as aforesaid, shall be a justification to the employer in withdrawing from the contractor the amount appearing thereby to be due to the sub-contractor, until he is satisfied that the same has been paid; the employer shall become the debtor of the sub-contractor for the amount, and may use it as a set-off, or plead its payment in bar of an action therefor by the contractor.

Payments made by proprietor before filing of settlement, valid; not liable to pay till the time of credit has expired.

SEC. 5. All payments made by the proprietor or owner of a building, before he is served with notice of the filing of the settlement, shall be valid, and he shall only be liable to the sub-contractor for the amount due from him to the contractor at the time of the service of the notice; and no owner or proprietor of any building shall, by virtue of any thing contained in this act, be bound to pay the value of any work or materials, or subject to any suit therefor, before the expiration of the time for which credit for such work and materials may have been agreed upon between the owner and contractor, if such contract for credit shall have been made before the sub-contractor shall have furnished any materials or performed any work.

Duty of clerk relative to liens filed in his office.

SEC. 6. It shall be the duty of the clerk to make an abstract of all liens filed in his office under this act, in a book to be by him kept for that purpose, containing the name of the person laying or imposing the lien, and of him against whom or upon whose contract it is imposed, the amount of the said lien, and a description of the property to be chorged, for which the clerk shall be allowed to receive sixty cents. (*a*)

Proceedings against property bound by lien, and to obtain judgment.

Extent and effect of judgment and execution.

SEC. 7. Whenever any person shall wish to proceed against any property, upon which he shall have a lien by virtue of this act, he may commence his suit in the ordinary form, and shall have judgment against the original debtor for the amount that shall be found due to him, and shall have the liberty of taking his execution against such a proportional part of the property charged with the lien as his demand bears to the whole amount of liens that are charged upon the said property under this act, which proportional part shall be decided by the court, and also against other property of the defendant; but if a part of the property cannot be separated from the residue, and sold, without damage to the whole, then the whole may be sold, subject to all other incumbrances under this act; but no execution shall issue against the property charged with such lien unless the defendant shall have owned or possessed the said property at the time of the commencement of said suit, or unless a *scire facias* shall first have issued and been served upon the owner or possessor of such property, requiring him to appear and show cause why judgment should not be entered up and execution had against such property. (*b*)

Plaintiff to proceed by *scire facias*, against whom.

Judgment on *scire facias*.

SEC. 8. In all cases under this act, it shall be lawful for the plaintiff to proceed by *scire facias* against the original debtor, and against all and every person or persons owning or possessing the property against whom he wishes to proceed; but no judgment to be rendered on the *scire facias* shall authorize the issuing of any execution, except against the property charged with said lien, or such part thereof as the court shall direct. (*c*)

Scire facias, how served.

SEC. 9. The service of the *scire facias* shall be in the same manner as the service of a summons, except upon those defend-

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(*a*) The failure of the clerk to record the lien does not affect its validity. The account of the demand is evidence of notice of the existence of the lien. Cornelius et al. vs. Grant & Abbott, 8 Missouri Rep., 59.

(*b*) See Sibley et al. vs. Casey & Biddle, 6 Missouri Rep., 164.

(*c*) In proceeding under this section, the account of the demand stands in the place of a declaration, and is considered a record; Cornelius et al. vs. Grant & Abbott, 8 Missouri Rep., 59.

ants who cannot be found in the county where the proceedings are had, and are not residents of such county; and upon such defendants the service shall be by affixing a copy of the *scire facias* upon the door of the building upon which the lien is charged, for six weeks at least before the return of the said *scire facias*.

Limitation of lien.

Sec. 10. No lien shall bind any building for a longer time than twelve months after the said building is finished, by virtue of this act, unless a suit shall have been brought on such lien in the manner provided in this act.

Sub-contractor to file a release, when.

Sec. 11. Within five days after the demand of any sub-contractor, who may have filed his lien by virtue of this act, shall be satisfied, either by the principal contractor or the owner of the property, such sub-contractor shall file in the office of the clerk in which the lien is filed, a release of the same, under a penalty of one hundred dollars, to be recovered by action of debt, in the name of the owner of the property affected by the lien.

Satisfaction of lien to be entered, when and how.

Sec. 12. Whenever any debt, which is a lien upon any building, shall be paid to any creditor other than a sub-contractor, he shall enter satisfaction on the margin of the record of said lien.

Creditor failing to enter satisfaction, forfeiture.

Sec. 13. If any creditor refuse or neglect to enter such satisfaction within ten days after the payment and request, he shall forfeit the amount of the lien which he claimed, to be recovered by action of debt in the name and for the use of the owner of the building.

Land not exceeding 500 square feet clear of building, subject to lien.

Sec. 14. The land upon which any building shall be erected, together with a convenient space around the same, not exceeding five hundred square feet clear of the building, shall also be subject to the liens which may be created by virtue of this act, if the said land shall have been at the time of erecting the said building the property of the person who shall have caused the same to be erected.

If title incumbered, the person who procures the work done, considered the owner of the land to the extent of his right and interest.

Sec. 15. If the person who shall have caused the building to be erected has an estate in fee, for life, or any less estate, either in law or in equity; or, if the land on which the building is erected at the time of the contract for building, or for furnishing materials therefor, is mortgaged, or under any other lien or incumbrance, by contract or statute, the person who procures the work to be done shall, nevertheless, be considered as the owner to the extent of his right and interest in the land, and the lien before provided for by this act shall bind his whole estate and interest therein, and the creditor may cause the right of redemption, or whatever other right or estate the owner had in the land, to be sold, and applied to the discharge of his debt, according to the provisions of this act. (*d*)

This act to take effect and be in force from and after its passage.

(*d*) See Sess. Act 1843, page 83, for the law concerning mechanics' liens in St.Louis county.

CHAPTER 110.

MILITIA.

An act to organize, discipline and govern the militia of this territory.

§ 1. Militia to be arranged in divisions, &c.
2 When they may be organized in separate battalions.
3. Officers to each division.
4. Governor to appoint, &c.
5. Commanders may appoint aids, &c.
6. Governor to appoint other officers.
7. Captains to enroll citizens, &c.
8. Powers of commander-in-chief.
9. Of artillery and dragoons.
10. Of companies of infantry.
11. To rendezvous in respective districts.
12. Companies to be called out to rendezvous, &c.
13. Duty of non-commissioned officers.
14. Duty of commander to provide books, &c.
15. Inspector to have charge of arms, &c.
§ 16. Captain to make returns to colonel.
17. Colonel to make returns to adjutant-general.
18. Duties of adjutant-general.
19. Neglect to perform duties, to be tried, &c.; penalty.
20. Colonel to make a list of field officers.
21. Duties of major-general.
22. Captain to keep a list of non-commissioned officers, &c.
23. Duty of president of court-martial.
24 Compensation to musicians.
25. Field officers to furnish stand of colors, &c; to be paid out of treasury.
26. Commissioned officer may order out the militia, when.
27. What persons shall be exempt from military duty.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Militia to be arranged in divisions, &c.

Section 1. That, immediately after the passage of this act, the militia of this territory shall be arranged into divisions, brigades, regiments, battalions and companies; it shall consist of infantry or district companies, light infantry, riflemen, artillerymen, and dragoons, or mounted riflemen. There shall be two divisions, as follows, viz: the country lying south of Kansas or Kaw river shall constitute the southern division, and the country lying north of the Kansas or Kaw river shall constitute and be known as the northern division. A division shall consist of not less than two nor more than three brigades; a brigade shall consist of not less than two nor more than five regiments; a regiment shall consist of not less than five nor more than ten companies, two of which shall be light infantry or riflemen; each company shall consist of not less than thirty nor more than one hundred men, exclusive of commissioned officers.

To be organized in separate battalions, when.

Sec. 2. That whenever a county or district of country is so distant or detached that in the opinion of the governor it would be inconvenient for the persons residing therein to belong to an organized regiment, they shall be organized as a separate battalion under the command of a major, and be subject to the same rules and regulations, in all respects, that regiments are subject to.

Sec. 3. That to a division there shall be one major-general; to a brigade one brigadier-general; to a regiment one colonel, one lieutenant-colonel and one major; to a company of infantry, light infantry, and riflemen, there shall be one captain, one first lieutenant and one second lieutenant; and to a company of dragoons and artillerymen, or mounted riflemen, there shall be one captain, one first lieutenant, one second lieutenant and one third lieutenant. All commissioned officers, except those of the light infantry and a rifle corps and staff officers, shall be clothed, armed and accoutred as the commander-in-chief may direct.

Officers to each division.

Sec. 4. That the governor, with the advice and consent of the legislative council, shall appoint and commission a major-general, two brigadier-generals and four colonels for each division; the brigadier-generals and colonels for each brigade shall appoint all subordinate officers for their brigade.

Governor to appoint.

Sec. 5. That the commander-in-chief may appoint, during his pleasure, four aids with the rank of colonel; the major-general may appoint, during his pleasure, two aids with the rank of major; a brigadier-general may appoint one aid with the rank of captain.

Commanders may appoint aids, &c

Sec. 6. The governor, with the advice and consent of the legislative council, shall appoint and commission one adjutant-general, and one inspector-general with the rank of brigadier-general. The commandant of each regiment and separate battalion shall appoint, during his pleasure, one adjutant, one quarter master, one pay master, each with the rank of lieutenant; also one surgeon and one surgeon's mate, one drum-major, one fife-major and one sergeant-major. The captain or commanding officer of each company shall appoint, during his pleasure, four sergeants, one of whom shall be clerk of the company, four corporals and two musicians.

Governor to appoint other officers.

Sec. 7. That the captain or commanding officer of each infantry or district company shall, by his clerk, enroll all free male citizens between the ages of eighteen and forty-five years, residing, or from time to time coming to reside, within the bounds of his tract or company district, except such as are hereinafter excepted.

Captain to enroll citizens, &c

Sec. 8. That the commander-in-chief shall have power and authority to increase or diminish the number of divisions and brigades, and to alter and arrange the boundaries thereof, and to divide, annex and consolidate them as he may from time to time deem necessary, having regard, however, to the provisions of this act; and in like manner the brigadier-general may, with the approbation of the major-general, divide, annex or alter the bounds

Powers of commander-in-chief.

of any of the regiments or separate battalions under his command; and the commanding officer of a regiment, or a separate battalion, with the approbation of the brigadier-general, may divide, annex or alter the bounds of the companies under his command.

Of artillery and dragoons.

SEC. 9. That there shall be within each brigade district, and attached to said brigade, not less than one company of artillery and one company of dragoons or mounted riflemen, to be composed of volunteers; they shall be organized, clothed, armed and accoutred in all respects as such corps in the service of the United States are, unless the commander-in-chief shall otherwise direct.

Of companies of infantry

SEC. 10. There shall be within each regimental district, and attached to said regiment, two companies of light infantry or riflemen; they shall be composed of volunteers; the light infantry shall be clothed, armed and equipped as the infantry in the United States are for the time being, unless the brigadier-general shall otherwise order and direct; the riflemen shall be clothed, armed and equipped as the brigadier-general may direct.

Rendezvous in their respective districts.

SEC. 11. That the volunteer companies, for the purpose of improving in martial exercise, shall rendezvous by companies in their respective districts, on the first Saturday in the months of May and September in each year, and as much oftener as the major-general may direct, and at ten o'clock of the forenoon of the said days; the place of meeting shall be designated by the captain or commanding officer, by putting up, or causing to be put up, at least four written or printed advertisements in his district or county ten days before the day of meeting.

Companies to be called out to rendezvous, &c.

SEC. 12. That on the last Saturday in the month of August, in every year, the colonel or commanding officer of each regiment and separate battalion shall, by written or printed advertisements, put up or distributed fifteen days before said day, call out all company and staff officers under his command to rendezvous at some convenient and suitable place, where they shall be formed and drilled in company order by the commandant; and at said rendezvous the commandant shall give to the officers public notice of the place where the regiment or battalion shall meet, which place shall be within his district, and the time as follows, viz: the first regiment, or one lowest in number in each brigade, shall meet at ten o'clock in the forenoon on the first Monday in October, and the next lowest in number shall meet on the next day, and so on in numerical order until all shall have met. The captains or commanding officers of companies shall then, within proper time, give notice of the intended regimental or battalion parade, in the same manner as they are directed by the preceding section to do in case of company rendezvous; each regiment and separate battalion shall assemble in the month of October aforesaid for the purpose of drill and parade at such place as the commandant may appoint and direct; and at such drill and parade as many evolutions shall be performed as circumstances and the nature of the case will permit, but the propriety of this section shall be subject to the discretion of the major-general.

Duty of non-commissioned officers.

SEC. 13. That it shall be the duty of every non-commissioned officer and private who owns a rifle, musket or firelock, to appear with it in good order at every parade.

Duty of commander to provide books of instruction

SEC. 14. That in order to insure uniformity in organization, discipline and government of the militia and volunteer companies in this territory, it shall be the duty of the commander-in-chief, from time to time, to provide, at the expense of the territory, such books of instruction as are or may be prescribed for the use of the army and militia of the United States, and furnish each militia officer with a copy; and each officer shall preserve and keep said book or books in good order, and hand them over to his successor in office.

Inspector to have charge of arms, &c.

SEC. 15. That the inspector-general shall, under the order of the commander-in-chief, have the custody and direction of all arms belonging to this territory, and shall annually report to the assembly the condition of the same. He shall, under the orders of the governor, lend the arms and accoutrements to the officers of any volunteer company having twenty men in uniform. It shall be his duty to take the bond of officers, with sufficient security, for the preservation and prompt return of said arms and accoutrements when called for; and in order to enable the inspector-general to comply with this section, it shall be the duty of the captain or commanding officer of each company which shall have obtained the arms and accoutrements as aforesaid, to report to him annually, or oftener, if required, the exact condition of said arms and accoutrements. The inspector-general shall be allowed and paid one hundred and fifty dollars annually, for books, stationery, and in full for all his services as such, payable quarterly out of any money in the territorial treasury not otherwise appropriated.

Captain to make return to colonel.

SEC. 16. That the captain or commanding officer of each company of infantry, light infantry, and riflemen, shall annually, six weeks before the annual meeting of the legislative assembly, make a full and complete return to the colonel or commandant of the regiment or battalion to which he belongs, of the names of all officers, non-commissioned officers, musicians and privates belonging to his company; also the dates of the commission, and place of residence of the officers; the number and kind of arms and accoutrements belonging, or in the possession of the members of his company. The captains of the companies of artillery and dragoons, or mounted riflemen, and all volunteer companies, shall, at the same time, make similar returns to the adjutant-general.

Colonels to make return to adjutant-general.

SEC. 17. That the colonels or commandants of regiments and separate battalions, on receiving the annual returns from the captains, shall, twenty days previous to the annual meeting of the legislative assembly, consolidate them, and make a return thereof to the adjutant-general. They shall also, at the same time, give a local description and the bounds of each company district composing the regimental or separate battalion districts which they command.

Duties of adjutant general.

SEC. 18. That the adjutant-general shall receive and file in his office all returns directed by law to be sent to him; he shall enter in a book to be kept for that purpose a local description of the companies, regiments, brigades and divisions; he shall keep a register of the officers of the militia and volunteer corps, containing their names, dates of commission, their rank, and the corps to which they belong; also, the division, brigade, regiment and company to which they are attached. He shall annually, previous to the meeting of the legislative assembly, make a return to the commander-in-chief, and forward a duplicate thereof to the president of the United States; said return shall show the strength and condition of the different corps, and the number and quality of the arms and accoutrements. The adjutant-general shall be allowed and paid one hundred and fifty dollars annually for books, stationery, and in full for all his services as such, payable quarterly out of any money in the territorial treasury not otherwise appropriated.

On refusal or neglect, to be tried, &c.

SEC. 19. That if any commandant of a regiment, separate battalion, or company, shall refuse or neglect to give the proper notice for calling out the militia under his command, as required by the eleventh and twelfth sections of this act, he shall be tried tried by a court-martial, and fined at the discretion of the court in a sum not exceeding twenty dollars; and any person subject to duty under this act, who shall absent himself, except in case of sickness of himself or family, or, if present, shall refuse or neglect to answer to his name and to do duty, or who shall leave his post or quit the ranks without leave, shall be tried by a court-martial and fined, if a colonel, not more than twenty dollars nor less than five dollars; if a lieutenant-colonel or major, not more than fifteen dollars nor less than five dollars; if a captain, not more than ten dollars nor less than five dollars; if a lieutenant, not more than six dollars nor less than three dollars; if a non-commissioned officer, musician or private, not more than three dollars nor less than two dol-

Penalty.

lars. That any commissioned officer who shall be guilty of disobedience of orders, neglect of duty, disrespect towards a superior officer, or any other unofficer-like conduct, shall be arrested and tried by court-martial, and fined in any sum not exceeding one hundred dollars, and may be suspended or cashiered at the discretion of the court-martial. If a non-commissioned officer, musician, or private, shall be guilty of disobedience of orders, or disrespect to an officer, during the time he shall be on duty, he shall be tried by a court-martial, and fined not less than five dollars nor more than twenty dollars. If any person, whether officer or non-commissioned officer or private, or whether belonging to the militia of this territory or not, shall appear at any parade wearing any personal disguise, or other unusual or ludicrous article of dress, or any arms, weapons, or other implements not required by law, and calculated to excite ridicule, or to interrupt the orderly and peaceable discharge of duty by those under arms, he shall be arrested and kept under guard the balance of three or more hours of parade, and tried by a court martial, and fined not more than twenty dollars nor less than five dollars.

Colonel to make a list of field officers.

SEC. 20. That the colonel or commanding officer shall, on the day of the regimental or battalion parade, make a list of the field officers, staff officers and company officers who are absent without special leave, and also a list of those (if any) who may have been guilty of any offence mentioned in the preceding section, and he shall, within ten days thereafter, forward the list with the charges and specifications to the brigadier-general, unless he be charged with some offence; in that case, the list and charges and specifications shall be forwarded to the major-general.

Duties of major-general.

SEC. 21. The major-general, or brigadier-general, on receiving the aforesaid list, shall detail a court-martial to meet at some suitable and convenient place, within twenty days thereafter, and such courts-martial shall be constituted and all their proceedings shall be conducted as courts-martial for the trial of officers of similar grade are by the rules and regulations of the army of the United States for the time being, except only that the members may sit without being dressed in uniform. The proceedings of the court shall be immediately transmitted to the commander-in-chief for his approval or rejection.

Captain to keep a list of non-commissioned officers, &c.

SEC. 22. That at each and every parade, either company, battalion, or regimental, the captain or commanding officer of each company shall keep a correct list of the non-commissioned officers, musicians and privates who are absent without special leave; and on the last parade day, in each and every year, he shall detail a court-martial for the trial of all who shall have been absent as aforesaid, or who shall have been guilty of any offence in the course of the current year. Said court-martial shall consist of one commissioned officer and four privates; the commisssioned officer shall preside, and in case of a tie, he shall divide. The president of a court-martial shall have the power and authority to swear and examine witnesses. If the commissioned officer be absent on the day of the court-martial, the officer who detailed the court shall immediately supply the vacancy by the appointment of another member of the company, whether officer or private, and a report of said absence shall be made to the commandant of the regiment, and the absentee shall be tried by a court-martial, and fined in like manner as if he had been absent on the day of regimental parade; and if any one of the privates be absent, the vacancy shall be immediately filled, and the absentee fined as though he had been absent on a parade day without leave and without excuse; but he may appeal to the colonel of the regiment, who shall hear the cause and determine it equitably.

Duty of president of court-martials.

SEC. 23. That it shall be the duty of the president of each and every court-martial, held under the authority of this act, immediately after court rises, to make out a return to the clerk of the county commissioners' court, of the name of each person fined and the amount of each fine. The said return shall be made to the clerk in the county in which the person fined resides, and the clerk shall include said fines in the list of taxes, and they shall be collected in the same manner, by the same collectors, with the same fees and costs, and be applied in the same manner as other taxes for county purposes, and for the time being collected and applied.

Compensation to drum-major, &c.

SEC. 24. That each drum-major and fife-major shall be allowed and paid two dollars for each day that they are employed under the provisions of this act.

Field officers to furnish stand of colors, &c.

SEC. 25. That the field officers of each regiment, and the commissioned officers of each company, shall furnish their respective commands with a stand of colors and the necessary instruments of music. Each captain shall appoint the most efficient of the non-commissioned officers, color bearers; and the field officers, on the day of the regimental parade, shall elect the most efficient color bearer on that day. The commandants of regiments and companies shall have power and authority to draw on the county treasurer of the county in which they respectively reside for the amount by them expended in the purchase of colors and instruments of music, and also for the *per diem* herein allowed for the payment of musicians, and the treasurer is hereby authorized and required to pay it out of any money in the treasury not otherwise appropriated; *provided*, that a stand of colors for a regiment shall not cost more than thirty dollars, and a stand for a company not more than fifteen dollars.

To be paid out of county treasury.

SEC. 26. That it shall be lawful for any commissioned officer, whenever and as often as any invasion or imminent danger thereof may come to his knowledge, to order out the militia or volunteer corps, or any part thereof, under his command, for the defence of the territory; he shall immediately give notice thereof (detailing all the circumstances) to the commander-in chief, who shall, on all occasions which to him may seem to require it, have full power and authority to call out any portion of the militia or volunteer corps, either by draft, by the acceptance of volunteers, or *en masse*.

Commissined officer may order out the militia, when.

SEC. 27. That the following designated officers and persons be and they are hereby exempted from militia duty, viz: The members of the executive, legislative and judiciary departments of the government of the United States, and their respective officers; all custom-house officers and their clerks; all post-masters and mail carriers, actually employed in the care and conveyance of the mail of the United States; all ferrymen on post-roads; the secretary of the territory; the members and officers of the legislative assembly during its session, and fourteen days before and after its session; ministers of the gospel of every denomination who prove to the commandant of the company in whose beat or precinct they reside, that they have been regularly ordained or licensed, and are now in full communion with their respective churches; and no others.

What persons shall be exempt from militia duty.

This act to take effect and be in force from and after its passage.

CHAPTER 111.

MERCHANTS.

An act to license and tax merchants.

§ 1. What persons are declared merchants.
2. Duty of merchant to deliver a list to assessor; penalty for failure to comply with provisions of revenue law.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Every person, or co-partnership of persons, who

Who are declared merchants.

shall deal in the selling of goods, wares, drugs or merchandise, at any stand, store or place, occupied for that purpose, is declared to be a merchant.

Duty of merchants.

SEC. 2. It shall be the duty of each merchant or co-partnership, trading as such, to deliver to the assessor of the county, at the time and place fixed for receiving lists of taxable property in his township, a full, true and perfect statement in writing of the cash value of all goods, wares, drugs or merchandise owned by him or in his charge during the twelve months next preceding, to be taxed as other property in this territory, and subject to the same penalties as other persons for a failure to comply with the provisions of the general revenue law passed at the present session of the legislative assembly.

Penalty for failure.

This act to take effect and be in force from and after its passage.

CHAPTER 112.

MILLS AND MILLERS.

An act concerning mills, millers, and the rates of toll.

§ 1. What are declared public mills.
2. Water and other mills declared public.
3. To grind for customers four days in each week.
4. Grain, how to be ground.
5. Rates of toll.
6. When bolting machine is turned by hand, duty of owner.
7. Extent of liability of owner. His duty to deliver flour, &c.
8. Cases of loss in which miller is not responsible.
§ 9. Not liable for bags, barrels, &c., not branded.
10. Millers to give due attendance to their customers.
11. To keep sealed measures.
12. Penalty for violation of this act.
13. Proceedings to convert a public into a private mill.
14. Converting a public water-mill into a private mill, deemed a forfeiture of privilege; may be dealt with as a public nuisance.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

What are declared public mills.

SECTION 1. All grist-mills which grind for toll are hereby declared public mills.

Water and other mills declared public.

SEC. 2. All water, steam, wind and horse or other mills, grinding for toll, that have heretofore been or shall hereafter be built in said territory of Kansas, by authority of any statute or order of any court, are hereby declared to be public mills.

SEC. 3. All public mills shall grind for customers at least four days in each week.

To grind for customers, &c.

SEC. 4. All grain brought to a public mill shall be ground in turn as the same shall be brought, and as well as the nature and condition of the mill will permit.

Grain, how to be ground.

SEC. 5. The owner or occupier of every public mill shall be entitled to toll all grain ground thereat, according to the following rates: *First*, if a water-mill, one-eighth of wheat, all other grain ground one-seventh, and if a steam-mill, one-sixth of wheat, all other grain one-fourth; *second*, if a horse or ox mill, the one-fifth part of wheat, and all other grain one-fourth; *third*, when the team shall be furnished by the owner of the grain, and with the assent of the owner or occupier of such horse or ox mill, the toll shall be charged as is provided in this section in relation to water-mills; *fourth*, so much of this section as concerns steam-mills shall be applicable to and govern wind-mills.

Rates of toll.

SEC. 6. When the bolting machine of any mill shall be so constructed as to require to be turned by hand, the owner or occupier of the mill shall only be bound to permit the owner of the grain to use the same.

When bolting machine is turned by hand, duty of owner.

SEC. 7. The owner or occupier or a public mill shall be accountable for the safe-keeping of all grain received for the purpose of being ground, and all sacks, bags, barrels and casks in which the same was received; and shall, when called for, deliver the flour, meal, hominy or malt, made from such grain, together with such sacks, bags, barrels and casks, to the owners or their agents or servants.

Extent of liability of miller, his duty to deliver flour, &c.

SEC. 8. The owner or occupier of a public mill shall not be liable for the loss of any grain, sacks, bags, barrels or casks, when such loss shall happen, *first*, without the fault or neglect of such owner or occupier; or *second*, by inevitable accident.

Cases of loss in which miller is not responsible.

SEC. 9. No owner or occupier of a public mill shall be liable for any sacks, bags, barrels or casks, that are not branded or marked with the owner's name.

Not liable for bags, barrels, &c., not branded.

SEC. 10. The owner or occupier of a public mill shall when his mill is in repair, and fit for business, give due attendance to his customers, and assist in loading and unloading all grain which may be brought by them for the purpose of being ground, and the material which shall be made thereof.

Millers to give due attendance to their customers.

SEC. 11. There shall always be kept at a public mill, by the owner or occupier thereof, a half bushel and a peck measure, tried and sealed by the clerk of the court transacting county business, and proper toll dishes for such measures.

To keep sealed measures.

SEC. 12. For every breach of any of the provisions of this act by the owner or occupier of a public mill, he shall forfeit

Penalty for violation of this act.

and pay to the party aggrieved by such breach, ten dollars, to be recovered by action of debt with costs.

Proceedings to convert a public into a private mill.

SEC. 13. Every owner or occupier of a public mill who shall desire to convert the same into a private mill, shall give at least thirty days' notice of such intention, by a written or printed advertisement, put up and kept up in some conspicuous place in such mill.

Converting a public water-mill into a private mill, declared a forfeiture of privilege; may be dealt with as a public nuisance.

SEC. 14. Whenever any water-mill, which shall have been erected pursuant to the provisions of the act concerning mills and mill-dams, shall be converted into a private mill, all the privileges of such mill conferred by act, or the judgment or decree of any court, shall be thereby forfeited, and the same shall be subject to be dealt with as a public nuisance.

This act to take effect and be in force from and after its passage.

CHAPTER 113.

MILLS AND MILL-DAMS.

An act regulating the writ of "ad quod damnum."

§ 1. When proprietor may erect a dam; how to proceed.
2. Owning land on one side of a stream, may erect a dam, when.
3. Petition to be filed under first section.
4. What the petition shall set forth.
5. Petition to be filed in the case supposed in the second section; what it shall set forth.
6. Where to be filed.
7. Writ of *ad quod damnum* to be issued; to whom directed; command thereof.
8. Duty of sheriff in executing the writ; subjects of inquiry.
9. Further duty in case under second section.
10. To set apart one acre of land.
11. Proprietor to be notified of the inquest, how.
12. Power of sheriff.
13. Inquest to be in writing, signed by jury and returned by sheriff.
14. Proceedings on return of inquest.
§ 15. Issues to be tried as in civil cases.
16. Costs, how adjudged.
17. Court may order new suit.
18. Court may enter an order of permission to erect a dam, when.
19. May include in its order a decree vesting title, when.
20. Order and decree subject to conditions.
21. Land decreed for mill privileges shall revert to original owner, when.
22. Altitude of dam may be increased, how.
23. Inquest or order not to bar right of action, except, &c.
24. Penalty for building or heightening dam without lawful permission.
25. Power of district court to prevent the erection of dams in certain cases.
26. What dams deemed public nuisances.
27. Effect of failure to build according to law.
28. Privilege to construct a dam shall cease, when.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When proprietor may erect a dam.

SECTION 1. Any person may erect a dam across any water-course, not being a navigable stream, if such person is the proprietor of the land through which the water-course runs, at the point where he proposes to erect his dam, by proceeding as in this law is provided.

Owning land on one side of stream, may erect a dam, when.

SEC. 2. Any person being the owner, in fee simple, of the land on one side of such water-course, including a part of the bed of the stream at a point where he proposes to erect a dam, may, nevertheless, erect such dam by proceeding as in this law is provided.

Petition to be filed under 1st section.

SEC. 3. In the case supposed in the first section, the person proposing to erect a dam shall file a petition in the district court of the county in which he proposes to erect his mill or other machinery in connection with the dam.

What the petition shall set forth.

SEC. 4. The petition shall set forth, *first*, a description of the land and an abstract of his title thereto; *second*, the name of the water-course, and a description of the point at which he proposes to erect his dam; *third*, the altitude of the dam which he proposes to erect; *fourth*, the kind of mill or other machinery which he proposes to connect with the dam.

Petition to be filed in a case supposed in 2d section.

What it shall set forth.

SEC. 5. In the case supposed in the second section, the person proposing to erect a dam shall file a petition as in the third section is provided, and in addition to the requirements of the fourth section, shall set forth, *first*, the name and place of residence of the owner of the land on the other side of the water-course whereon he would abut his dam; *second*, on what side of the water-course he proposes to erect his mill, or other machinery, in connection with the dam; and, *third*, a prayer that the title to one acre of the land on the opposite side of such water-course, to include the place where he will abut his dam, may be decreed to him, and that the same may be set apart by metes and bounds.

Where to be filed.

SEC. 6. Such petition shall be filed in the court of the county within which the petitioner proposes to erect such mill or other machinery.

Writ of *ad quod damnum* to be issued.

To whom directed.

Command thereof.

SEC. 7. Upon filing the petition, it shall be the duty of the court to cause a writ of *ad quod damnum* to be issued under the seal of the court, directed to the sheriff, commanding him to summon twelve fit persons of his county to meet at the place where it is proposed to erect a dam, on a day to be named in the writ, then and there to inquire, by the said jury, touching the matters contained in the petition, a copy of which shall accompany the writ.

Duty of sheriff in executing the writ.

SEC. 8. The sheriff shall attend the jury on the day and at the place appointed, and upon full examination, inquire by such jury: *First*, what damage each proprietor will sustain by reason

Subjects of inquiry.

of inundation consequent upon the erection of the dam, as proposed; *second*, whether the mansion house of any such proprietor, or the out-houses, curtilages or gardens thereto immediately belonging, or orchard, will be overflowed thereby; *third*, whether, and to what extent, ordinary navigation and fish of passage will be obstructed by such erection, and whether, and by what means, the same may be prevented or diminished; and, *fourth*, whether the health of the neighborhood will be materially annoyed in consequence of such erection.

Further duty in case, under 2d section.

Sec. 9. In the case supposed in the second section, the sheriff shall further inquire by the jury the value of the one acre of land mentioned in the prayer of the petition.

To set apart an acre of land.

Sec. 10. The sheriff shall, with the assistance of the jury, set apart one acre of land by metes and bounds.

Proprietor to be notified of the inquest, how.

Sec. 11. In such case the sheriff shall give the proprietor of the land, whereof one acre is prayed for, a reasonable notice of the time and place when and where he will take the inquest of the jury, if such proprietor be in his county; and if not, he shall set up such notice at the house of the tenant of such land; and if there be no actual tenant thereof, he shall set up such notice at some conspicuous place on the land.

Power of the sheriff.

Sec. 12. The sheriff shall have power, with the jury, to go into and act in an adjoining county, when necessary, to the discharge of the duties under this act.

Inquest to be in writing, signed by jury, and returned by sheriff.

Sec. 13. The inquest of the jury shall be reduced to writing, signed by each of the jurors, and returned by the sheriff, together with the writ and a statement of the manner in which he executed it, into the court whence it issued, without delay.

Proceedings on return of inquest.

Sec. 14. Upon the return of such inquest and writ, any person aggrieved by the verdict of the jury may file his objections to the proceedings under such writ and to the verdict, and show cause why the proceedings should be quashed and the verdict set aside.

Issue to be tried as in civil cases.

Sec. 15. The court may, thereupon, direct issues to be made up and tried as in other civil cases; and, if good cause be shown therefor, the court shall quash the proceedings and set aside the verdict.

Costs, how adjudged.

Sec. 16. The costs attending the trial of such issues shall be adjudged against the unsuccessful party as in other civil cases.

Court may order a new writ.

Sec. 17. The court, on motion, may order a new writ of *ad quod damnum* to issue, for the purpose of having the damages assessed according to law.

Court may enter an order of permission to erect a dam, when.

Sec. 18. If no objections be filed to the proceedings under the writ, or to the verdict of the jury, and it shall appear to the court, upon a view of the inquest, that the mansion house of any proprietor, or the out-houses, curtilages or gardens thereto belonging, or orchard, will not be overflowed, or that the health of the neighborhood will not be materially annoyed by the stagnation of water consequent upon the erection of the proposed dam, the court shall then consider whether, all the circumstances weighed, it be reasonable that the permission to erect such dam, as prayed for, should be given, and thereupon enter an order giving permission, or not, accordingly. (a)

May include in its order a decree vesting title, when.

SEC. 19. When the party petitioning shall have prayed for an acre of land whereon to abut his dam, the court shall include in its order granting the permission to erect the dam, a decree vesting the title of such acre of land in the party petitioning, his heirs and assigns, forever.

Order and decree subject to conditions.

SEC. 20. The order and decree authorized by the two last preceding sections, and the rights and privileges thereby granted, shall, in all cases, be upon, and subject to, the conditions following: *first*, such conditions, in reference to the obstructions to fish of passage and ordinary navigation, as the court shall think proper to impose; *second*, that all damages and valuations, assessed and made by the jury, shall be paid; *third*, that the dam and mills, or other machinery, shall be commenced within one year, and finished and ready for business within three years, from the date of the order of permission; *fourth*, that whenever the dam or mill, or other machinery, shall be destroyed or materially impaired, the same shall be rebuilt or repaired within three years thereafter; but if the owner of such dam or mill, or other machinery, shall be an infant, or of unsound mind, *femme covert*, or imprisoned, at the time such dam or mill, or other machinery, shall be destroyed or materially impaired, then within three years after such disability is removed.

Land decreed for mill privileges shall revert to original owner, when.

SEC. 21. In case of non-compliance with any of the conditions concerning the building, re-building or repairing, where the land of another shall have been decreed by the court for the purpose of an abutment, the same shall revert to, and revest in, the original owner or his legal representatives.

Altitude of dam may be increased, how.

SEC. 22. Any owner of any dam and mill, or other machinery, erected in virtue of this or any previous law may increase the altitude of his dam by permission of the court, under and by the same proceedings, regulations and conditions hereinbefore provided.

Inquest or order not to bar right of action, except, &c.

SEC. 23. The inquest of the jury, or the order and permission of the court, founded thereupon, shall not bar any prosecution or action which any person would have had in law, had this law not been made, except for such injuries as were actually foreseen and estimated by the jury.

(a) Hook vs. Smith, 6 Missouri Rep., 225.

Penalty for building or heightening dam without lawful permission.

SEC. 24. Any person who shall build or heighten any dam, or any other stoppage or obstruction, on or across any water-course, without first obtaining permission from the court of the proper county, according to law, and shall thereby work any injury to any other person, shall forfeit to the party injured double damages for such injury, to be recovered by action on the case.

Power of district court to prevent the erection of dams in certain cases.

SEC. 25. The court of the proper county shall have power as a court of chancery, upon petition, to prevent the erection or raising of any dam, stoppage or obstruction, across any stream which shall operate to the nuisance and injury of any mill or other machinery erected, or of any dam the erection of which had been authorized by the order of any competent tribunal, of a date earlier than that permitting the erection and raising of such first mentioned dam, stoppage or obstruction; and such court may, upon a final hearing of such petition, decree that such dam, stoppage or obstruction be abated by the sheriff of the proper county.

What dams deemed public nuisances.

SEC. 26. All dams, stoppages and obstructions not made according to law, shall be deemed public nuisances, and may be dealt with as such. (*b*)

Effect of failure to build according to law.

SEC. 27. If any person, or his legal representative, to whom permission to erect a dam, in virtue of this law, shall have been given, shall fail to build, re-build or repair the same, together with the mill or other machinery connected therewith, according to the requirements of this law, or the conditions of the permission, it shall be lawful for any person owning the land on one side of the water-course, at the point where such dam was erected, or below, to build a dam and mill or other machinery thereon as if no such permission had been given, without incurring any liability on account of backing the water on such dam.

Right to construct a dam to cease if it obstructs the making of improvements on navigable stream by the territory.

SEC. 28. If the improvement of the navigation of any stream shall be undertaken by the territory, or by any county or other lawful authority under the territory, then the privilege to keep any dam across such stream, the right to construct which may be hereafter granted, shall cease, if the same would prevent or obstruct the making of such improvement; and it shall be the duty of the owner or owners of such dam, either to remove the same or to make such change in the same as will render the navigation safe and convenient, according to the plan of such improvement: said change or alteration in such dam shall be so constructed as

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(*b*) See Welton and Edwards vs. Martin, 7 Missouri Rep., 307; Porter et al. vs. Withinham et al., 17 Maine Rep., 292; 11 Mass. Rep., 364, 462.

to be approved of by the proper officers or agents who shall have the superintendence of the improvement of such stream.

Occupier or claimant of dam on public lands deemed owner.

SEC. 29. Whenever any dam shall be built on any public lands, the occupier and claimant thereof shall, for all the purposes mentioned in this act, be deemed the owner thereof; but nothing in this section contained shall be so construed as to conflict with the title of the United States to any land to which such title of the United States shall not have been extinguished.

This act to take effect and be in force from and after its passage.

CHAPTER 114.

MORTGAGES.

An act concerning mortgages.

§ 1. Petition to foreclose mortgage, where to be filed; what it shall set forth.
2. Petition, where to be filed, if part of the property be real estate.
3. Assignee may sue in his own name.
4. Proceedings in case of the death of mortgagee, or assignee, or mortgagor.
5. Summons to issue; to what county; service and return.
6. Summons returned, defendant not found; proceedings.
7. Claimant of interest to be made a defendant, how.
8. Incumbrancers and persons having an interest, to be made parties.
9. Order of publication, when and how made.
10. Judgment by default to be rendered, when.
11. Debtor not summoned or appearing, what the judgment shall be.
12. If summoned or appearing, what the judgment shall be.
13. Execution to be a special *fieri facias*.
14. When returnable; sales under, how conducted.

§ 15. *Fieri facias*, where directed.
16. Title which the purchaser acquires.
17. Where personal representative has been summoned, or appears, what judgment shall be rendered.
18. Mortgages or leasehold estates.
19. Proceedings in suits under this act.
20. This act not to prevent the mortgagee or his assigns from proceeding in a court of chancery.
21. On notice, mortgaged personal property, other than slaves, may be sold without suit, when. Notice, how and when given.
22. Acknowledgment of satisfaction to be entered of record, &c.
23. Forfeiture for failure to acknowledge satisfaction, or execute a deed of release.
24. Attorney in fact empowered to execute a deed of release. Effect of such deed.
25. Redemption, by payment to officer, before sale, certificate to be given. To be recorded. Effect thereof.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Petition to foreclose mortgage, when and where filed, what it shall set forth.

SECTION 1. All mortgagees of real estate or slaves, and mortgagees of personal estate other than slaves, when the debt secured amounts to fifty dollars or more, may file a petition in the office of the district court against the mortgagor and the actual tenants or occupiers of such real estate, setting forth the substance of the mortgage deed, and praying that judgment may be rendered for the debt, and that the equity of redemption may be foreclosed, and the mortgaged property sold to satisfy the amount due. (*a*)

Petition, where filed, if part of the property be real estate.

SEC. 2. If any part of the property be real estate, the petition may be filed in any county where any part of the mortgaged premises is situated; if it be exclusively personal estate, it may be filed and proceedings commenced as in other personal actions.

Assignee may sue in his own name

SEC. 3. In all cases of assignment of any mortgage debt, whether by writing or operation of law, the assignee may sue for the recovery of the debt in his own name, alleging the assignment, and proceeding in other respects according to the provisions of this act.

Proceedings in case of death of mortgagee, or assignee, or mortgagor.

SEC. 4. In case of the death of the mortgagee or his assignee, or of the mortgagor, whether before or after action brought, the personal representative of the deceased party shall be made plaintiff or defendant as the case may require.

Summons to issue; to what county; service and return.

SEC. 5. The clerk shall issue a summons to the defendants to answer the petition, and if the defendants reside in different counties, a separate summons shall be directed to each county, and the service and return of such summons shall be made as in actions of law: a copy of the petition shall accompany every such summons.

(*a*) Proceedings to foreclose a mortgage, under the Missouri statute, are proceedings at common law; Carr vs. Holbrook, 1 Missouri Rep., 172; Milam et al. vs. Administrator of Bruffee, 6 Missouri Rep., 635. A deed made for lands, to be absolute on the payment of certain notes, but in default of payment to be void, is to be considered a mortgage; Carr vs. Holbrook, 1 Missouri Rep., 172. As to the difference between mortgages and conditional sales and pledges, see Desloge & Rozier vs. Ranger, 7 Missouri Rep., 327; Williams vs. Rozier, *ibid*, 556. The mortgagor of personal property will be restrained from removing the mortgaged property out of the state, before payment of the debt; Berry & Smith vs. Buckhart, 1 Missouri Rep., 296. An agreement that land should be chargeable with, and security for, the payment of a debt, though not a legal, is yet an equitable mortgage; Davis vs. Clay, 2 Missouri Rep., 130. An assignee of a debt secured by mortgage may, by a bill in chancery, compel the sale of the mortgaged premises for the payment of the debt, as the mortgage, by the assignment of the debt, passes as an incident to it; Labarge vs. Chauvin, 2 Missouri Rep., 145. Subsequent incumbrancers cannot be permitted to redeem a part, without paying the prior incumbrancer his whole demand; Russell vs. Heirs of Mullanphy, 3 Missouri Reports, 319. The circuit court has jurisdiction over a suit for the foreclosure of a mortgage, as well after the death of the mortgagor as before; Ayres vs. Heirs of Shannon, 5 Missouri Rep., 282. A deed of mortgage, with a power of sale in the mortgagee, is valid in this territory, and a sale by the mortgagee, if made in pursuance of the provisions of the deed, vests in the purchaser a valid title; Carson vs. Blakey, 6 Missouri Rep., 273. If a creditor, whose debt is due by instalments, and secured by mortgage, sell the whole of the mortgaged premises under a judgment for the first instalment, he cannot, afterwards, under a judgment for the second instalment, sell the same premises; Buford et al. vs. Smith, 7 Missouri Rep., 489. As to the construction of mortgages, see Berry vs. Craig, 3 Missouri Rep., 360; Desloge et al. vs. Ranger, 7 Missouri Rep, 327. A mortgage deed may be assigned, by writing, unsealed; Crinion et al. vs. Nelson, 7 Missouri Rep., 466.

Proceedings on return of *non est.*

Sec. 6. If a return be made on such summons that any defendant cannot be found, such proceedings shall thereupon be had as in ordinary actions of law.

Claimant of interest may be made defendant, how.

Sec. 7. Any person claiming an interest in the mortgaged property may be made defendant to any such proceedings on motion, and may plead any lawful plea in avoidance or bar of deed or debt, and issue shall be made and tried as in actions at law.

Incumbrancers, &c., to be made parties.

Sec. 8. All incumbrancers, or persons having an interest existing at the commencement of the suit, subsequent as well as prior in date to the plaintiff's mortgage, provided the same shall be of record in the county where the same may be situated at the commencement of the suit, shall be made parties, otherwise they shall not be bound by the judgment.

Order of publication, when and how made.

Sec. 9. If any plaintiff shall allege in his petition, that the mortgagor, or other defendant, is not a resident of this territory, or that his place of residence is unknown, or that he is dead, and there is no personal representative in this territory, or that his name or place of residence is unknown; the court or clerk, being satisfied of the truth of any of said facts, shall make an order of publication, which shall conform, as near as may be, to orders of publication in chancery, and shall be published in like manner as said orders.

Judgment by default.

Sec. 10. Judgment by default shall be rendered against any defendant, who, after being summoned or notified, shall not appear, and plead or answer at the time allowed in ordinary actions at law.

Debtor not summoned, or appearing, what the judgment shall be.

Sec. 11. When the debtor is not summoned, and has not appeared, the judgment, if for the plaintiff, shall be, that he recover the debt and damages found to be due, and costs, to be levied of the mortgaged property, describing it as in the mortgage.

If summoned or appearing, what the judgment shall be.

Sec. 12. When the debtor has been duly summoned, or appears to the action, the judgment, if for the plaintiff, shall be as in the preceding section specified, with the addition, that if the mortgaged property be not sufficient to satisfy said debt, damages and costs, then the residue to be levied of other goods, chattels, lands and tenements of said debtor.

Execution a special *fieri facias.*

Sec. 13. The execution to be issued shall be a special *fieri facias*, directed to the sheriff, and shall be in conformity to the judgment. (*b*)

(*b*) It is contrary to the policy of the act regulating mortgages, that a mortgagee should sue at law for the mortgage debt, and, under a judgment thus obtained, sell the premises mortgaged for the payment of that debt; McNair et al. vs. O'Fallon et al., 8 Missouri Rep., 188. After a mortgagee has obtained judgment of foreclosure and sale against the mort-

When returnable; sales under, how conducted.

SEC. 14. Such writs shall be returnable as executions, and the advertisement, sale and conveyance of real or personal estate, under the same, shall be made as under ordinary executions.

Fieri facias, where directed.

SEC. 15. If such mortgage be for real estate, such writ of *fieri facias* shall be directed to the sheriff of the county in which the same is situated; and if it be for personal property, it may be directed to any county.

Title which the purchaser acquires.

SEC. 16. A purchaser under a sale by virtue of an execution on a judgment rendered under this act, shall take a title as against the parties to the suit, and he shall not be permitted to set it up against the subsisting equity of those incumbrancers who are not parties to the same, and who are required to be made parties thereto by the eighth section of this act. (*c*)

When personal representative has been summoned or appears, what judgment shall be rendered.

SEC. 17. When the personal representative debtor has been duly summoned, or appears to the action, the judgment, if for the plaintiff, shall be as before directed; and if, in such case, the mortgaged property be insufficient to satisfy the debt, damages and costs, the judgment, as to the residue, shall have the effect of a judgment against an executor or administrator as such.

Mortgages of leasehold estates.

SEC. 18. Mortgages of leasehold estates shall be proceeded on as in mortgages of real estate.

Proceedings in suits under this act.

SEC. 19. In all suits commenced in virtue of this act, the proceedings shall conform, as near as may be, to the proceedings in actions at law.

Remedy in court of chancery not prevented.

SEC. 20. Nothing in this act shall be so construed as to prevent a mortgagee, or his assignee, or the representative of either, from proceeding in a court of chancery to foreclose a mortgage, according to the course of proceeding in chancery in such cases.

On notice, mortgaged personal property, other than slaves, may be without suit, sold, when.

SEC. 21. In all mortgages in which personal estate, other than slaves, only, is conveyed, and the debt, exclusive of interest, secured by the same, shall not exceed one hundred dollars, it shall and may be lawful for the mortgagee, or his personal representatives, upon default being made in the payment of the mortgaged debt, by the mortgagor or his legal representatives, to sell the mortgaged property, or so much thereof as will satisfy his debt, giving the mortgagor sixty days' previous notice, in writing, that the mortgaged property will be sold, unless the debt

Notice, how and when given.

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gagor, another creditor may sell the equity of redemption of the mortgagor under execution, and the mortgagee may become the purchaser of such equity; Benton vs. O'Fallon, executor of Mullanphy, 8 Missouri Rep., 650.

(*c*) The eighth and sixteenth sections of this act were designed to restore the law to what it was believed to be before the decisions of the supreme court in the cases of Mullanphy vs. Simpson, 3 Missouri Rep., 345, and Russell vs. Mullanphy's heirs, 4 Missouri Rep., 319. As to the equity of those sections, *vide* 3 Johnson's Chan. Rep., 459, Haines et al. vs. Beach et al.

secured by it is paid, and giving thirty days' notice of the time and place of sale; the notice to be published in the same manner as a sheriff's notice of the sale of real estate: in all other mortgages of personal estate, no sale of such property shall be made by the mortgagee but by foreclosure and sale, as in mortgages of real estate.

Acknowledgment of satisfaction to be entered of record, &c.

Sec. 22. If any mortgagee, his executor or administrator, or assignee, receive full satisfaction of any mortgage, he shall, at the request of the person making the same, acknowledge satisfaction of the mortgage on the margin of the record thereof, or deliver to such person a sufficient deed of release of the mortgage.

Forfeiture for failing to acknowledge satisfaction, or make deed of release

Sec. 23. If any such person, thus receiving satisfaction, do not, within thirty days after request, acknowledge satisfaction on the margin of the record, or deliver to the person making satisfaction a sufficient deed of release, he shall forfeit to the party aggrieved ten per cent. upon the amount of the mortgage money absolutely, and any other damages he may be able to prove he has sustained, to be recovered in any court of competent jurisdiction.

Attorney in fact empowered to execute a deed of release. Effect of such deed

Sec. 24. Any attorney in fact, to whom the money due on any mortgage is paid, shall have power to execute said release, as specified in section twenty-two of this act: such acknowledgment of satisfaction thus made, or such deed of release duly acknowledged and recorded, shall have the effect to release the mortgage, and bar all actions brought thereon, and re-vest in the mortgagor, or his legal representatives, all title to the mortgaged property.

Redemption before sale, certificate to be given.

Sec. 25. If such mortgaged property be redeemed by payment to the officer before the sale, such officer shall make a certificate thereof, and acknowledge the same before some officer authorized to take acknowledgments of deeds for lands; and such certificate shall be recorded in the office in which the mortgage is recorded, and shall have the same effect as satisfaction entered on the margin of the record.

To be recorded, effect thereof.

This act to take effect and be in force from and after its passage.

CHAPTER 115.

NON-RESIDENTS.

An act to prevent non-residents from grazing stock in Kansas territory.

§ 1. Non-residents not to graze stock in this territory.
2. Provisions under which he may herd or graze.
§ 3. Tax to be paid.
4. Of persons not prevented.
5. Penalty for violation of this act.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Non-resident not to graze stock in this territory, &c.

SECTION 1. That it shall be unlawful for any person who is a non-resident of the territory of Kansas to bring into, or cause to be brought into, said territory any cattle, horses, sheep, hogs or other stock for the mere purpose of herding and grazing the same, unless he shall have complied first with the provisions of this act herein provided.

Provisions under which he may herd or graze.

SEC. 2. That if any person or persons shall make application to the tribunal transacting county business, or the clerk thereof in vacation, for a permit to herd or graze stock of any description, it shall be the duty of said court, or clerk in vacation, to swear the applicant as to the number of stock he wishes to herd or graze, which affidavit he shall file in the office of said county court or tribunal, and shall, upon the payment of the amount hereinafter specified, grant the said applicant a permit under the seal of such court or tribunal.

Tax to be paid.

SEC. 3. That such person or persons shall pay, as provided in the second section of this act, for grazing horses or mules, *twenty-five cents* per head per month; for sheep or hogs, *ten cents* per head per month; which amount shall be paid into the county treasury.

Of persons not prevented.

SEC. 4. That this act shall not be so construed as to prevent any person or persons who are drovers, or other persons traveling through the territory of Kansas, from grazing or herding their stock in said territory of Kansas free of charge.

Penalty for violation of this act.

SEC. 5. That any person or persons who shall be found guilty of violating any of the provisions of this act, shall forfeit and pay the amount of not less than ten nor more than two hundred dollars, to be recovered by an action at law, to the use and benefit of the county in which the same shall have been committed.

This act to take effect and be in force from and after its passage.

CHAPTER 116.

NOTARIES PUBLIC.

An act respecting notaries public.

§ 1. Governor to appoint notaries; term of office.
2. Power to administer oaths.
3. Their powers and duties.
4. To keep a record, &c.
5. In cases of vacancy, his records and papers to be delivered to the recorder.
§ 6. To provide a notarial seal, and authenticate his official acts therewith.
7. Shall take an oath and give bond; condition thereof.
8. Bond, &c., shall be recorded.
9. Limitation of actions against notaries.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Governor to appoint notaries.

SECTION 1. The governor shall appoint and commission in each county, as occasion may require, one or more notaries public, who shall hold their offices for four years.

Power to administer oaths.

SEC. 2. They may administer oaths and affirmations in all matters incident or belonging to the exercise of their notarial office.

Their powers and duties.

SEC. 3. They may receive the proof or acknowledgment of all instruments of writing relating to commerce and navigation; receive and authenticate acknowledgments of powers of attorney, make declarations and protests, and certify the truth thereof under their official seals, concerning all matters by them done by virtue of their offices; and shall have all the powers and perform all the duties of register of boatmen. (*a*)

To keep a record, &c.

SEC. 4. Every notary shall keep a fair record of his official acts, and, if required, shall give a certified copy of any record in his office upon the payment of the fees therefor.

In case of vacancy his records and papers to be delivered to the recorder.

SEC. 5. If any notary die, resign, be disqualified or remove from the county, his record and official and public papers of his office shall, within thirty days, be delivered to the recorder of the county, to be delivered to his successor when qualified.

To provide a notarial seal, &c.

SEC. 6. Every notary shall provide a notarial seal containing his name, surname of office and place of residence, and he shall authenticate all his official acts, attestations and instruments therewith.

Shall take an oath and give bond.

SEC. 7. Every notary public, before entering on the duties of his office, shall take the oath of office (*b*) prescribed by law, which shall be endorsed on his commission, and shall give bond to the territory of Kansas in the sum of five hundred dollars, with good

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(*a*) *Vide* Robinson vs. Johnson, 1 Mo. Rep., 308; Moore vs. Bank of State of Missouri, 6 *ibid.*, 379.

(*b*) *Vide* art. 3, sec. 32 of the constitution of the State of Missouri.

Condition thereof.

securities, conditioned for the faithful performance of the duties of his office.

Bond, &c., shall be recorded, where.

Sec. 8. Such bond, commission and oath shall be recorded in the recorder's office of the county, and the bond shall be filed in the office of the secretary of the territory, and may be sued on by any party injured.

Limitation of actions against notaries.

Sec. 9. No suit shall be instituted against any such notary or his securities more than three years after such cause of action occurs.

Powers of notary.

Sec. 10. Notaries public shall have authority to administer all oaths provided for by law, and to take the acknowledgment of all instruments to the same extent and with the like effect of a justice of the peace, and shall receive the same fees therefor, and may certify the same under their name.

This act to take effect and be in force from and after its passage.

CHAPTER 117.

OATHS AND AFFIRMATIONS.

An act regulating oaths and prescribing the forms of oaths of office.

§ 1. All officers to take and subscribe an oath of office.
2. Oath of office to be endorsed on commission.
3. Officers authorized to administer oaths.
§ 4. In what manner oaths shall be administered.
5. When person may affirm.
6. When subject to penalty of perjury.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

All officers to take and subscribe oath of office.

Sec. 1. All officers, elected or appointed under any existing or subsequently enacted laws of this territory, shall take and subscribe the following oath of office: "I, ———, do solemnly swear upon the holy evangelists of Almighty God, that I will support the constitution of the United States, and that I will support and sustain the provisions of an act, entitled 'An act to organize the territories of Nebraska and Kansas,' and the provisions of the law of the United States commonly known as the 'fugitive slave law,' and faithfully and impartially and to the best of my ability demean myself in the discharge of my duties in the office of ———; so help me God."

To be endorsed on every commission.

Sec. 2. Which oath of office shall be endorsed on every commission or certificate of appointment, and may be administered by any person in this territory authorized to administer oaths.

SEC. 3. Every judge, justice of the peace, county commissioner, clerk of a court of record, clerk of the board of county commissioners, or notary public, within this territory, shall be authorized to administer oaths.

Officers authorized to administer oaths.

SEC. 4. All oaths in this territory shall be administered by laying the hand on the holy bible and kissing the book, except where the party swearing shall have conscientious scruples of swearing in that mode, in which case they may swear with uplifted hand.

In what manner oaths shall be administered.

SEC. 5. Any person who may have conscientious scruples about swearing, may, instead thereof, affirm with uplifted hand, in the following manner: "I do most solemnly and sincerely affirm, in the presence of Almighty God," &c. And all oaths of office, except such as may have by custom prescribed forms, shall be: "You do solemnly swear or affirm," &c.

When persons may affirm.

SEC. 6. All oaths and affirmations alike subject the party who shall falsify them to the pains and penalties of perjury.

Violation of oaths or affirmations subject to penalty of perjury.

This act to take effect and be in force from and after its passage.

CHAPTER 118.

OFFICERS.

An act authorizing officers to call to their assistance the power of the county.

§ 1. Officer may call to his aid the power of the county.
§ 2. Penalty for failing to obey summons of officer.
3. How prosecuted.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. In all cases where, by the common law, or a statute of this territory, any officer is authorized to execute any process, he may call to his aid all free white male inhabitants above the age of twenty-one years and under fifty years, in the county in which the officer is authorized to act.

Officer may call to his aid the power of the county.

SEC. 2. If any such person shall refuse or neglect to obey the summons of any such officer, such person shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall also be imprisoned at the discretion of the court.

Penalty for failing to obey summons of officer.

SEC. 3. All persons violating the provisions of this act may be prosecuted by said officer before any court having cognizance thereof.

How prosecuted.

This act to take effect and be in force from and after its passage.

CHAPTER 119.

OFFICERS—FEES OF.

An act to provide for the pay of officers and others.

§ 1. Fees allowed district attorney.
2. Of county commissioners.
3. Of judge of probate.
4. Of clerk of supreme court.
5. Of clerk of district court.
6. Of sheriff.
7. Of coroner.
8. Of constable.
9. Of justice of the peace.
10. Of notary public.
§ 11. Of recorder.
12. Of county commissioners, &c.
13. Of jurors and witnesses.
14. Meaning of the word "folio."
15. Clerk to keep a fee-book, &c.
16. Who may issue fee-bills.
17. Fees to be taxed, &c.
18. Costs and fees to be endorsed.
19. Fees due, when.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Fees allowed district attorney.

Section 1. That the following fees shall be allowed to the officers and others hereinafter mentioned: To the district attorney—judgment in civil cases, two dollars and fifty cents; all collections for territory or county, ten per cent.; drawing indictment, if found for misdemeanor, five dollars; conviction for misdemeanor, five dollars; indictment, if found for felony, ten dollars; conviction for felony, ten dollars; conviction in capital case, twenty-five dollars; all other matters, such fees as shall be deemed reasonable by the court. The above fees shall be taxed as costs in the cause, but no fee shall be allowed for indictment where the same is quashed.

Clerk of the board of county commissioners.

Sec. 2. Clerks of the boards of county commissioners—every order of whatsoever nature, if not otherwise expressed, of one folio or less, twenty-five cents; all over one folio, fifteen cents; taking and filing contractor's bond, fifty cents; reading and filing petition, complaint, remonstrance or objections, plea or report, and order thereon, fifty cents; certifying appointment of road reviewers, under seal, fifty cents; same, not under seal, fifty cents; entering of record less than one folio, twenty-five cents; for each additional folio, fifteen cents; certifying any matter under seal, fifty cents; certifying any matter without seal, twenty-five cents; taking and filing any bond, official or otherwise, one dollar; entering appointment of any officer, fifty cents; making poll books, per page, twenty-five cents; all matters incorporating any town, one dollar and fifty cents; all matters in relation to organizing of townships, one dollar and twenty-five cents; trying and sealing weights and measures, twenty-five cents; every certificate and seal, fifty cents; taking acknowledgment of any instrument, fifty cents; issuing any license, one dollar; every writ, original, one dollar;

every subpœna or *mesne* process, fifty cents; filing every paper, ten cents; administering every oath, ten cents; every issue made, fifteen cents; entering decision, fifty cents; process for jury, fifty cents; swearing jury, twenty-five cents; taking verdict and entering same, twenty-five cents; entering settlement or other matter, one folio or less, twenty-five cents; each additional folio, fifteen cents; copies or transcripts of any matter whatsoever, per folio, fifteen cents; making out land lists or tax lists, per folio, ten cents; taking receipts and filing the same, twenty-five cents. All services for individuals or corporations, or done on the application of either, shall be paid by them; and all services for the territory or a county, shall be paid by the territory or county.

Judge of probate.

Sec. 3. Judge of probate—appointment of executor or administrator, guardian or curator, and certifying the same, fifty cents; granting letters testamentary or of administration, one dollar; taking bond of executor, administrator, guardian or curator, and approving same, one dollar; taking probate of will, entering and certifying same, one dollar; certificate of appointment for any purpose, if under seal, fifty cents; same, if not under seal, twenty-five cents; certifying or endorsing every oath administered, twenty-five cents; every order, motion, rule, settlement, approval, disapproval, application, leave, or other matters of whatsoever nature entered of record, if one folio or less, twenty-five cents, and for every additional folio, fifteen cents; filing every paper, ten cents; administering every oath, ten cents; certificate and seal, fifty cents; taking acknowledgment of instrument, fifty cents; every original writ, one dollar; every subpœna or *mesne* process, fifty cents; docketing every cause, ten cents; every issue joined, fifteen cents; entering appearance of each party, fifteen cents; precept for jury, fifty cents; swearing jury, twenty-five cents; taking verdict, twenty-five cents; every finding, twenty-five cents; giving and entering judgment, seventy-five cents; execution, one dollar; entering demand against estate, ten cents; allowing or disallowing same, fifty cents; classifying claim, ten cents; drawing and entering indenture, one dollar; making search of record or papers, fifteen cents; trial without jury, fifty cents; finding of the court, twenty-five cents; commission to take depositions, seventy-five cents; interrogations, per folio, fifteen cents; certifying depositions, fifty cents; continuance of cause, fifty cents; granting appeal and entering same, twenty-five cents; appeal bond, seventy-five cents; affidavit or appeal, twenty-five cents; order of distribution, fifty cents; every citation, fifty cents; recording or copying any record, paper, or other matter, if one folio, twenty-five cents; each additional folio, fifteen cents; solemnizing marriage, three dollars; in all other matters of business of said judge, he shall receive the same fees as the clerk of the district court for similar services.

Clerk of supreme court

Sec. 4. Clerk of the supreme court—issuing any writ original, one dollar; subpœna, fifty cents; taking any bond, one dollar; filing transcript and docketing cause, fifty cents; filing every paper, ten cents; administering every oath, ten cents; filing assignment of errors or joinder, twenty-five cents; for recording or copying any opinion, brief, abstract or other matter, per folio, fifteen cents; retaxing costs, if required, per folio, twenty cents; for all other services done, the same fees as are allowed clerks of the district courts for similar duties.

Clerk of district court.

Sec. 5. Clerks of the district courts—filing any paper, ten cents; issuing every original writ at law or in chancery, civil or criminal, one dollar; entering appearance, fifteen cents; taking and entering recognizance, fifty cents; every bond in a cause otherwise stated, fifty cents entering every order, motion, rule, application, settlement, report, plea, issue, demurrer or other matter, of one folio or less, twenty-five cents, and for each additional folio, fifteeen cents; every continuance, fifty cents; subpœna or any *mesne* process, fifty cents; commission to take depositions, seventy-five cents; judgment *retraxet*, discontinuance, *nil dicet*, *non sum informatus*, by confession, default, or of non-suit or upon issue joined of law or fact, or on report of referees or arbitrators, fifty cents; precept for jury, seventy-five cents; swearing and entering jury, fifty cents; taking verdict, fifty cents; delivering copy of special jury to each party, fifty cents; trial by the court, fifty cents; trial by jury, fifty cents; entering appeal from justice of the peace, fifty cents; entering to supreme court, fifty cents; recognizance on appeal, fifty cents; affidavit on appeal, fifty cents; writ of *certiorari*, seventy-five cents; bond on *certiorari*, seventy-five cents; entering satisfaction of record, twenty-five cents; taking and entering acknowledgment, or sheriff or marshal's deed, one dollar; taking acknowledgment of any instrument, fifty cents; *scire facias*, one dollar; copying any matter, per folio, fifteen cents, and all transcripts, per folio, fifteen cents; every verdict returned by the grand jury, fifty cents; *venire* for a grand jury, one dollar; swearing and entering grand jury, seventy-five cents; every issue in chancery directed, thirty cents; interlocutory decree, one dollar; entering final decree, ten folios or less, one dollar and fifty cents; all over ten folios, per folio, fifteen cents; writ of injunction, one dollar; process of sequestration, one dollar. All fees specified in this section shall be applicable as well in civil as in criminal business, and also in chancery.

Sheriff's fees.

SEC. 6. Sheriff's fees—serving every original writ, for each defendant, one dollar; taking and returning every bond required by law, one dollar; serving *scire facias*, injunction, *travere facias possessionem* or sequestration, one dollar; serving *mandamus* or *quo warranto*, one dollar; executing *ad quod damnum* drawing, returning inquisition, two dollars; levying execution, one dollar; calling action, fifteen cents; writing sheriff's deed when required, two dollars and fifty cents; calling each party, fifteen cents; calling each witness, ten cents; summoning each witness, fifty cents; executing any *mesne* process, fifty cents; returning *non est* on any writ original or judicial, or return of *nulla bona*, fifty cents; summoning grand jury, three dollars; summoning jury on special verdict, one dollar and fifty cents; calling grand jury, twenty-five cents; calling petit jury, twenty-five cents; return of *non est* on subpœna, fifteen cents; serving notice, rule, or citation, fifty cents; summoning jury of inquest, or to try the right of property, and drawing and returning inquest or report, two dollars; taking recognizance of prisoner and returning the same, one dollar; committing prisoner to jail, seventy-five cents; boarding prisoner per day, forty cents; trial or confession in criminal case, one dollar trial or confession in capital case, three dollars; executing sentence of death, including expense in performing same, twenty-five dollars. Every sheriff shall be allowed for safe-keeping, supporting and removing live stock and other property, seized under legal process, such fees as the court shall deem reasonable, to be taxed as other costs; for commission for receiving and paying over money on execution when land or goods have been sold, four per cent. on the first two hundred dollars, three per cent. on the next three hundred dollars, two per cent. on all sums above five hundred dollars, one-half of such commission when the money is paid without levy, and three-fourths of such commission when a levy has been made but no sale, and such commission shall be paid as other costs.

Coroner's fees.

SEC. 7. Coroners—for the view of a dead body, three dollars; writ for jury, one dollar; swearing and charging jury, one dollar; subpœna, fifty cents; recognizance, fifty cents; administering each oath, ten cents; receiving verdict of inquest, fifty cents; warrant of person charged in report of jury, one dollar; traveling, going and returning, per mile, five cents: which fees shall be paid out of the estate of the deceased, or if the deceased be a slave, by the master; or if estate of deceased be not sufficient, then out of the county treasury. The coroner when acting as sheriff shall receive the same fees as are allowed to sheriffs for similar services.

Constable's fees.

SEC. 8. Constables—serving warrant in criminal cases, for each defendant, fifty cents; serving summons, or notice, or summoning witness, twenty-five cents; summoning jury to try the right of property, swearing and taking verdict, one dollar and twenty-five cents; summoning jury before justice, seventy-five cents; serving execution, twenty-five cents; taking any bond required by law, fifty cents; attachment, fifty cents; for receiving and keeping property, such compensation as the justice may deem reasonable; for all collections to be paid as other costs, three per cent.

Justice's of peace fees.

SEC. 9. Justices of the peace—issuing summons, subpœna or precept for a jury, twenty-five cents; issuing original attachment or execution, fifty cents; issuing writ of forcible detainer, restitution or re-restitution, criminal warrant or warrant of commitment, seventy-five cents; any attachment in the process of a cause, twenty-five cents; taking bond when required by law, fifty cents; administering oath, (each person sworn,) ten cents; swearing jury, twenty-five cents; taking verdict, twenty-five cents; entering judgment, fifty cents; docketing cause, ten cents; affidavit when certified, or affidavit on appeal, twenty-five cents; appeal bond, fifty cents; taking acknowledgment of instrument, fifty cents; certifying deposition, fifty cents; writing deposition, transcript copies, or entering any matter or docket, per folio, fifteen cents; posting strays, including ten copies of certificate, seventy-five cents; each additional copy, when required, twenty-five cents; recognizance in criminal cases, fifty cents; taking testimony, per folio, fifteen cents; every warrant, writ or process, not otherwise expressed, twenty-five cents; solemnizing marriage, including recorder's fee, three dollars; acting as coroner, same fees allowed to coroner.

Notary public.

SEC. 10. Notaries public—entering or registering protest, twenty-five cents; noting bill of exchange or note, twenty-five cents; noting without protest, twenty-five cents; notice to each endorser or other party, twenty-five cents; taking acknowledgment of instrument, fifty cents; traveling when required, per mile, ten cents; marine or fire insurance protest, one dollar; certificate, twenty-five cents; affidavit, attested by seal, fifty cents; certificate and seal, fifty cents; drawing contract of boatman, fifty cents; taking acknowledgment of contract, fifty cents; entry of boatman failing to render himself, twenty-five cents; copy of all records or papers, per folio, fifteen cents. All other services, same fees as are allowed to justices of the peace for similar services.

Recorder.

SEC. 11. Recorders—recording all instruments or other matter, per folio, ten cents; indexing same, to be added to recording fee, ten cents; recording plat of survey, per course, five cents; recording marriage certificate, fifty cents; index to same, ten cents; certificate and seal, fifty cents.

County commissioners, &c.

SEC. 12. County commissioners—president and members of boards of county commissioners, per day each, to be paid by the county, three dollars.

Of jurors and witnesses.

SEC. 13. Jurors and witnesses—each juror, per case, in any court, twenty-five cents; each witness, per day, in any court, one dollar; going and returning to place of holding court, per mile, five cents.

Meaning of word "folio."

SEC. 14. The term folio, wherever mentioned in this act, shall be deemed to mean one hundred words, and every figure shall be counted as one word, and all fractions shall be counted as one figure.

Clerk to keep fee-book, &c.,

SEC. 15. Each clerk shall keep a fee-book, and shall enter therein all fees to officers, witnesses or others in his court; and all officers shall keep set up a list of fees allowed them by this act, and on failure to do so shall be subject to a fine of ten dollars.

Who may issue fee-bills, &c.

SEC. 16. Any clerk, probate judge or justice of the peace may issue fee-bills, and they shall have all the force and effect of an execution.

Fees to be taxed, &c.

SEC. 17. Any party who may have paid any fees may have them taxed as costs, and, on producing his voucher, have the same paid back to him.

Costs and fees to be endorsed.

SEC. 18. Every person issuing execution, shall endorse thereon all costs or fees due to each person separately.

Fees due, when.

SEC. 19. All fees due any officer or other person, shall be deemed due when the services are performed; and such officer, witness or juror, except in criminal cases, may refuse to act until his fees are paid or secured; all fees for services for any individual or corporation, shall be paid by such person or corporation; all services for the benefit of the county, shall be paid out of the county treasury; and all fees for services performed for the territory, shall be paid out of the territorial treasury.

This act to take effect and be in force from and after its passage.

CHAPTER 120.

OFFICERS—PAY OF.

An act designating the pay of officers.

§. Of the pay of the clerks of the legislative assembly.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Of the pay of the clerks of the legislative assembly.

Section 1. That the chief and assistant clerks of the house, and the chief and assistant clerks of the council, shall be allowed for services, as follows: For copying journals of their respective houses, and furnishing same to the public printer, fifteen cents per hundred words; for indexing journals of their respective houses, and furnishing same to public printer, twenty cents per hundred words.

This act to take effect and be in force from and after its passage.

CHAPTER 121.

PARTITION.

An act to provide for the partition of land and personal property.

§ 1. Joint tenants, tenants in common and coparceners may petition district court for partition of lands.
2. What the petition shall set forth.
3. Parties in interest to be made parties to the proceeding.
4. When the name or interest of a party is unknown, what course to be pursued.
5. Service of the petition, how made, and by whom.
6. Notice of the application, how directed.
7. Notice by publication.
8. When the court shall proceed.
9. Any party in interest may, on appearance and application, be made a party.
10. How a party appearing may plead; what may be plead in defence.
11. Replications and further proceedings.
12. Issues, pleadings, &c., to be as in actions at law.

§ 13. Default to be entered, when.
14. Duty of court to give judgment of partition.
15. Court may set off shares in one parcel, and divide residue.
16. Parcel set off to several, how held and enjoyed.
17. How the court may decide on adverse claims.
18. Court shall appoint commissioners to make partition; when.
19. Commissioners shall take oath.
20. Shall proceed to make partition; how. If it cannot be made without prejudice, proceedings.
21. How the commissioners shall divide the land.
22. May divide land into lots, &c., and make return; when.
23. Commissioners to make report.
24. Report to be proved and acknowledged; how.

§ 25. May be set aside and new commissioners appointed.
26. Report shall be confirmed and judgment given; when. Effect of partition and judgment.
27. A copy of report and judgment to be recorded; where.
28. When premises or part of them may be sold.
29. Proceedings, when the commissioners report that a part only of the shares have been set off.
30. Effect of confirmation of report, setting off parcel subject to adverse claim.
31. Report of commissioners, and plat of land laid out under 22d section, to be filed with recorder.
32. What the order of sale shall specify.
33. May be renewed; when.
34. Premises may be sold separately or divided.
35. Duty of sheriff; shall make a deed; effect thereof.
36. Sheriff and his securities responsible on his official bond for his acts in cases of partition.
37. When sheriff goes out of office he shall execute all unfinished business relative to cases of partition, unless, &c.
38. Compensation of the sheriff.
39. Sheriff to report his proceedings to the court.
40. Proceeds of sale to be divided.
41. Shares of absent parties, how invested.
42. Sheriff to retain money arising from sale of adverse claims.
43. Party claiming such money to file his petition in the district court.
44. Summons to issue, to whom and where directed.
45. Order of publication, when and how made.
§ 46. How and where published.
47. What defendant's answer shall state.
48. Questions of fact to be tried, how; form of issues.
49. Judgment by default may be rendered, when.
50. Court shall adjudge and order payment, when.
51. Joint tenants, and tenants in common, entitled to remedy for partition.
52. Partition not to be made contrary to will of testator.
53. Authority of guardian in divisions of lands.
54. Court to appoint guardians, when.
55. Such guardian required to give bond, when; condition thereof.
56. Real estate of decedent lying in several counties, petition may be filed in any county by widow or adult children.
57. If it appear to the court that parties in interest are adults, commissioners to be appointed; to take an oath.
58. Commissioners to make report, when.
59. Report to be confirmed and judgment rendered, when; effect of the judgment.
60. If land not susceptible of division, proceedings.
61. Vacancies, how filled.
62. Compensation of commissioners.
63. Majority of commissioners have power to act.
64. Appeals and writs of error allowed.
65. Power of court to make partition of slaves and other personal property.
66. If it appear to the court that partition cannot be made in kind, sale may be ordered.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Joint tenants, tenants in common and coparceners, may petition court for partition of lands.

SECTION 1. When any lands, tenements or hereditaments shall be held in joint tenancy, tenancy in common, or coparcenary, it shall be lawful for any one or more of the parties (*a*) interested therein to present a petition to the district court of the district wherein such lands, tenements or hereditaments lie (or where any tract of land is divided by a county line, then the court of either of the counties in which the lands may lie), for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof if it shall

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(*a*) It is no objection that some of the parties are coparceners and others joint tenants, or tenants in common; Chouteau & Smith vs. Paul., 3 Missouri Rep., 260. See Post., sec. 34.

appear that partition cannot be made without great prejudice to the owners.

What the petition shall contain.

Sec. 2. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth the rights and titles of all parties interested therein, so far as the same are known to the petitioner, including tenants for years, for life, by the courtesy or in dower, and of persons entitled to the reversion, remainder or inheritance, and of every person who, upon any contingency, may be, or become entitled to any beneficial interest in the premises, and such petition shall be verified by affidavit.

Parties in interest to be made parties to the proceeding.

Sec. 3. Every person having any such interest as is specified in the last section, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, may be made a party to such petition.

When the name or interest of a party is unknown, what course to be pursued.

Sec. 4. In case one or more of such parties, or the share or quantity of interest of any of the parties, be unknown to the petitioner, or be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties cannot be named, the same shall be so stated in the petition.

Service of the petition, how made and by whom.

Sec. 5. A copy of such petition, with notice that the same will be presented to the court on some certain day in term, or as soon thereafter as a hearing can be had, shall be served four weeks previous to such term on all parties interested in the lands or tenements, who shall not have joined in the petition, and on the guardians of such as are minors or of unsound mind.

Notice of the application, how directed.

Sec. 6. The notice of such application shall be directed to all the parties by name whose names are known, whether their interests are known or are uncertain, contingent or unknown, and general to all others unknown, having any interest in such premises.

Notice by publication.

Sec. 7. If any of the parties having such interests are unknown, or if any of the known parties reside out of the territory of Kansas, or cannot be found therein, and affidavit of such facts be filed in the clerk's office with the petition, a notice of the application describing the premises and of the object of the petition shall be published once a week for eight weeks successively in some newspaper printed in or nearest to the county in which the proceeding is had, or instead thereof, as to any known absent parties, the petition and notice may be served on them personally out of this territory, and in either case notice shall be deemed sufficient.

When the court shall proceed.

Sec. 8. Upon the presentation of such petition, and due proof being made of the service thereof, with notice or the publication, as required by the preceding provisions, the court shall proceed therein as hereinafter directed.

Any person in interest may on appearance and application be made a party.

Sec. 9. Any person having an interest in the premises sought to be divided or sold, whether such interest be present or future, vested or contingent, though not made a party in the petition, may appear and be made a party on application for that purpose, accompanied by an affidavit of such interest.

How party appearing may plead; what may be pleaded in defence.

Sec. 10. Any party appearing may, within the time prescribed for pleading in actions at law, or within such time as the court may allow for that purpose, plead either separately or jointly, with one or more co-defendants, any special matter as a defence, or that the defendants, or any of them, did not hold the premises together with the petitioners at the time of the commencement of the proceedings as alleged in the petition; and under such last mentioned plea, the defendant pleading it may give notice of any special matter to sustain such plea, and may give evidence thereof on the trial as if the same had been specially pleaded.

Replications and further pleadings.

Sec. 11. Replications and further pleadings may be had between the parties respectively, according to the practice of the court in actions of law, until an issue or issues of law or fact be joined between the parties or some of them.

Issues, pleadings, &c., to be as in actions at law.

Sec. 12. All issues shall be had, and the like proceedings for the trial thereof shall be had, and bills of exception may be taken, new trials granted, and pleadings amended, in the same manner as in actions at law.

Default to be entered, when.

Sec. 13. If any of the parties, duly notified by personal service or publication, according to the foregoing provisions, shall not appear and plead within the time allowed for that purpose, the default shall be entered, but the petitioners shall, nevertheless, exhibit the proofs of their title.

Court to ascertain the rights of the parties and give judgment of partition.

Sec. 14. The court shall ascertain from the evidence in case of a default, or from the confession by plea of the parties if they appear, or from the verdict by which any issue of fact shall be determined, and shall declare the rights, titles and interests of the parties to such proceedings, petitioners as well as defendants, so far as the same shall have appeared, and shall determine the rights of the parties in such lands, tenements or hereditaments, and give judgment that partition be made between such of them as shall have any right therein, according to such rights.

Court may set off shares in one parcel, and divide residue.

Sec. 15. It shall be lawful for the court in rendering judgment of partition to order and direct that any number of shares be set off together in one parcel, and that the residue be divided among the other parties according to their several rights.

Parcel set off to several, how held and enjoyed.

Sec. 16. If partition be made according to such judgment, and the report of the commissioners, as hereinafter directed, be confirmed, the parcel so set off to several parties shall thereafter be held and enjoyed by them in like portions and in the same estate as they before had in the whole.

How the court may decide on adverse claims.

Sec. 17. Whenever it shall appear in any proceeding in partition that there are parties claiming the same portions adversely to each other, the court may either decide upon such adverse claims, or, in its discretion, direct the share or shares so in controversy to be set off and allotted, subject to the claims of the parties in controversy against each other.

Court shall appoint commissioners to make partition, when.

Sec. 18. Whenever any judgment of partition shall be rendered, the court shall, by rule or order, appoint not less than three nor more than five respectable freeholders, residents of the county in which the premises to be divided, or the greatest part thereof in value, shall be situate, to make the partition so adjudged, according to the respective rights and interests of the parties as the same were ascertained and determined by the court, and on such rule or order the court shall designate the part or shares which shall remain undivided.

Commissioners shall take oath.

Sec. 19. The commissioners, before proceeding to the execution of their duties, shall be sworn or affirmed, before some judge or justice of the peace, honestly and impartially to execute the trust reposed in them; which oath or affirmation, being subscribed by the commissioners and certified by the judge or justice, shall be filed with the clerk of the court at or before the coming in of the report of such commissioners.

Shall proceed to make partition, how.

If it cannot be made without prejudice, proceedings.

Sec. 20. The commissioners shall forthwith proceed to make partition according to the judgment of the court, unless it shall appear to them, or a majority of them, that partition of the premises cannot be made without great prejudice to the owners, in which case they shall make report of such fact to the court, in writing, under their hands; or if a part only of the land ordered to be divided by the court is susceptible of division, the commissioners shall proceed to make division of such part, and make report thereof, and of the residue which in their opinion is not susceptible of division.

How the commissioners shall divide the lands.

Sec. 21. In making partition, the commissioners shall divide the lands and tenements, and allot the several portions and shares thereof to the respective parties, quality and quantity relatively considered by them, according to the respective rights and interests of the parties so adjudged by the court, designating the several shares and portions by metes and bounds, and may, when necessary, employ a surveyor and assistants to aid them therein.

May divide lands into lots, &c., and make return, when.

SEC. 22. Whenever, in the opinion of the commissioners, in any case of partition or order of sale, it will be to the interest of the parties to divide the lands into lots, and lay out streets, avenues, lanes or alleys, they may cause the same to be done, and in that case shall return with their report a plat of the land so laid out, which report shall be subject to the rejection or confirmation of the court, as in other cases.

Commissioners to make report in writing.

SEC. 23. The commissioners shall make a full and ample report of their proceedings in writing, signed by them or a majority of them, specifying therein the manner of executing their trust, and describing the lands divided and the shares allotted to each party, with the quantity of each share, the boundaries, courses and distances, and the items of their charges.

Report to be proved and acknowledged, how.

SEC. 24. The report shall be proved or acknowledged before some officer authorized to take the proof deeds, in the same manner that deeds are required to be proved or acknowledged to entitle them to be recorded, and filed in the office of the clerk of the court.

May be set aside, and new commissioners appointed

SEC. 25. Upon good cause shown by any of the parties, the court may set aside the report (*b*) and appoint new commissioners as often as may be necessary, who shall proceed in like manner as heretofore directed.

Report shall be confirmed and judgment given, when.
Effect of partition and judgment.

SEC. 26. If no such cause be shown, the report shall be confirmed, and judgment shall thereupon be given that such partition be firm and effectual forever; and such judgment shall be binding and conclusive on all parties to the proceedings and their representatives, and all other persons claiming under any of them by right derived after the commencement of the proceeding.

A copy of report and judgment to be recorded, where.

SEC. 27. A copy of such report and of the judgment of confirmation, duly certified by the clerk of the court, shall be recorded in the office of the recorder of the county in which the estate divided is situate.

When premises or part of them may be sold.

SEC. 28. If the commissioners so appointed shall report to the court that the lands, tenements, or hereditaments, of which partition shall have been directed, are so situated, or that any lot, tract or portion thereof is so situated, that partition thereof cannot be made without great prejudice to the owners of the same, the court may, if satisfied that such report is just and correct, make an order that the sheriff sell the premises, or such portion of them as are reported unsusceptible of division, at public auction, to the highest bidder.

Proceedings when commissioners re-

SEC. 29. Whenever the commissioners report that they have

(*b*) Circuit courts have no power to reject the report and make partition themselves; George vs. Murphy, 1 Missouri Rep., 779; Murphy vs. Murphy, *et al.*, 1 Missouri Rep., 741.

port that a part only of the shares have been set off. set off a part only of the shares, according to the division ordered, and such report is confirmed, only that part of the land which is not set off to any party shall be sold, and the proceeds apportioned among the parties to whom no land has been allotted, and the costs of the proceedings shall be paid by the parties in proportion to their respective shares in the land which is the subject of the proceedings.

Effect of confirmation on parties to adverse claims. SEC. 30. When, in any report of commisioners setting off a parcel, the subject of the adverse claims different parties shall be confirmed, it shall be a bar to the claims of such parties to the residue of the lands, or the moneys arising thereon, if sold, and shall vest the part allotted, subject to the controversy, in the party who shall have title to the share or shares represented in the allotment.

Report of commissioners and plat of lands laid out under 22d section, to be filed with recorder. SEC. 31. Where the commissioners have, in pursuance of the provisions of the twenty-second section, laid out the land into lots, streets, lanes or alleys, and have returned a plat of the land so divided, and their report is confirmed, a copy of the plat shall be filed in the office of the recorder of the county, in like manner, and with like effect, as in the case of plats of towns or additions made and filed by proprietors.

What the order of sale shall specify. SEC. 32. The order of sale, to be made in pursuance of the provisions of this act, shall not specify the time of sale, but the sale shall take place during some day of the term of the district court, and be governed by the same regulations prescribed by law for sales of real estate under executions, notice thereof being given by the sheriff in the same manner as provided by law for such sales.

Order of sale may be renewed, when. SEC. 33. Where any such order of sale has been made, and the sale has failed to take place by reason of the failure of the term of the court or other cause, the court, or clerk thereof in vacation, shall renew such order of sale generally, without specifying any time for sale, and the clerk shall, without delay, deliver a certified copy of such order to the sheriff, who shall then proceed to advertise and sell in conformity to the foregoing section.

Premises shall be sold separately or may be divided, when. SEC. 34. If the premises consist of distinct buildings, farms, tracts, or lots of land, they shall be sold separately; or when any tract of land or lot can be divided for the purpose of sale, with advantage to the parties interested, it may be so divided and sold in parcels.

Duty of sheriff. SEC. 35. The sheriff shall take the notes or bonds for the purchase money, collect and pay over the same according to the

Shall make a deed. order of the court, and make the deed to the purchaser, which

Effect thereof.

shall be acknowledged or proved and recorded in the same manner as conveyances made by the sheriff of lands sold under executions, and shall be a bar, both in law and equity, against all persons interested in such premises who shall have been parties to the proceedings, and against all other persons claiming from such parties or either of them.

Sheriff and his securities responsible on his official bond, for his acts in cases of partition.

Sec. 36. The sheriff and his securities shall be responsible on his official bond for his acts in cases of partition, and for the notes, bond or money collected or received by him, and he may be compelled to account for and pay over the same in the same manner as in cases of money collected on execution.

When sheriff goes out of office, he shall collect and pay over money, and make deed, unless, &c.

Sec. 37. If any sale be made by any sheriff before he goes out of office, and the business be not completed when he ceases to be sheriff, he may do all subsequent acts, collect and pay over the money, and make the deed, in the same manner as if he continued to be sheriff, unless the district court shall, by order, direct the business to be transferred to the next sheriff; in which case, all acts remaining to be done by the sheriff, at the date of such order, shall be done by the sheriff then in office.

Compensation of the sheriff.

Sec. 38. As a compensation for his services, the sheriff shall receive a commission on the amount of sales not exceeding two per cent. on the first thousand dollars, and one per cent. on all sums over that amount and under five thousand dollars, and one-half of one per cent. on all sums over that amount, to be allowed by the court; and if two different sheriffs shall do part of the business, the commission shall be equitably divided between them.

Sheriff to report his proceedings to the court.

Sec. 39. After completing the sales, the sheriff shall report his proceedings to the court, with a description of the different parcels of the land sold, the name of the purchaser, and the price bid, which report shall be filed in the court; he shall also file in the clerk's office an accurate statement of all money received, and all costs and expenses paid or incurred in the transaction of the business, and the court shall allow such as are legal and reasonable.

Proceeds of the sales to be divided.

Sec. 40. The proceeds of every such sale, after deducting the costs and expenses of the proceedings, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises, and shall be paid to them, their guardians, or legal representatives, by the sheriff.

Shares of absent parties, how invested.

Sec. 41. Where any of the parties whose interests have been sold are absent from this territory without any legal representative in this territory, or are not known or named in the proceedings, the court shall direct the shares of such parties to be invested in public stock of the United States or of this territory, or loaned out in trust, on bond and mortgage upon unincumbered real estate, of at least double the value of such investment.

Sheriff to retain money arising from adverse claims.

SEC. 42. In all cases of adverse claims to any one or more shares, the money arising from sales which belongs to the owner of such share or shares shall be retained by the sheriff of the county, and by him held subject to the future order of the court.

Party claiming such moneys to file his petition.

SEC 43. Any party to the proceeding in partition, claiming such moneys as owner of the premises sold, may file his petition in the office of the clerk of the court, setting forth the nature of his claim in all its particulars, and the name and residence, if known, of the other party, claiming as aforesaid, and praying an order for the payment of the money to him, which petition shall be verified by the affidavit of the petitioner, or some credible person.

What it shall set forth.

Summons to issue; to whom and where directed.

SEC. 44. Upon the filing of such petition, the clerk shall issue a summons, directed to the sheriff of each county in this territory in which any defendant resides, with a copy of the petition, which shall be served as in ordinary cases at law.

Order of publication, when and how made.

SEC. 45. If it appear that the name or residence of a defendant is unknown, or that he is not a resident of this territory, or cannot be found to be served with a summons, the court, judge or clerk may make an order of publication, setting forth the nature and object of the petition, and requiring the defendant to appear and file his answer to the same on or before a day to be named, which shall not be less than ninety days from the date of the order.

How and where published.

SEC. 46. Such order shall be published in some newspaper in or nearest to the county in which the proceeding is had, weekly, for three weeks successively, the last insertion to be at least six weeks before the day named for filing the answer.

What defendant's answer shall state.

SEC. 47. The answer shall state the nature of defendant's claim in all its particulars, shall be verified by the affidavit of the defendant, or some other credible person, and may be filed in vacation.

Questions of fact to be tried, how.

SEC. 48. The court shall cause all questions of fact, presented by the petition and answer, to be tried as other questions of fact, without the formality of replication, and shall prescribe the form of the issue or issues to be tried, upon which a special or general verdict may be found.

Form of issues.

Judgment by default may be rendered, when.

SEC. 49. A judgment by default may be rendered against any defendant who does not appear and answer to the command of the summons or publication, and payment of the money ordered accordingly.

Court shall adjudge and order payment, when.

Sec. 50. When an answer is filed and the facts determined, the court shall proceed to adjudge and order the payment of the money to the party entitled.

Joint tenants, &c. entitled to remedy for partition.

Sec. 51. All joint tenants and tenants in common who now hold, or hereafter shall hold, jointly or in common, for years or for life, or for lives, with the other or others of them who have or shall have estates of inheritance or in fee, and each of them shall in every case have the like remedy for the partition of any lands, tenements or hereditaments, so held by them in joint tenancy or tenancy in common, and in all respects subject to the like proceedings, as hereinbefore prescribed in other cases. (c)

Partition not to be made contrary to will of testator.

Sec. 52. No partition or sale of lands, tenements or hereditaments, devised by any last will and testament, shall be made, under the provisions of this act, contrary to the intention of any such testator, expressed in any such will and testament.

Authority of guardian in divisions of lands.

Sec. 53. The guardians of all minors and persons of unsound mind, appointed according to law, shall be and are hereby authorized, in behalf of their respective wards, to do and perform any matter or thing respecting the division of any lands, tenements or hereditaments, as herein directed, which shall be binding on such ward, and deemed as valid, to every purpose, as if the same had been done by such ward after his disabilities are removed.

Court to appoint guardians, when.

Sec. 54. It shall be lawful for said district court, for any of the purposes intended by this act, and before or after any proceeding by virtue thereof, to appoint a guardian for any minor, whether such minor reside in or out of this territory, and such guardian, for all the purposes of this act, shall have the same power as any general guardian.

Such guardian required to give bond, when.

Sec. 55. It shall be the duty of the said court, on appointing any guardian as aforesaid to any minor entitled to moneys arising from the sale aforesaid, to require of said guardian a bond to the territory, with such security as the court shall deem sufficient, conditioned for the faithful discharge of the trust committed to him, and to render a just and true account of such guardianship, in all courts and places, when thereto lawfully required.

Condition thereof.

Real estate of decedent lying in several counties, petition may be filed in any county by widow or adult children.

Sec. 56. When any resident of this territory, owning lands or real estate lying in several counties, dies intestate, leaving a widow and children, after the settlement of such deceased's estate by the administrator, if there be sufficient effects, exclusive of real estate, to pay all the debts thereof, the widow and adult children of such deceased may petition the district court of the county wherein any of the real estate is situated, setting forth a particular description of all the real estate belonging to the deceased, and the proportion each petitioner is entitled to receive, together with all the other facts of the case, praying an assignment of dower in the same to the widow, and a division and partition of the residue among the children or other descendants entitled to inherit.

(c) Chouteau & Smith, vs. Paul, 3 Missouri Rep., 203.

If parties in interest are adults, court to appoint commissioners, who shall take an oath.

SEC. 57. The court, upon being satisfied that all the parties in interest are adults, and parties to the petition, shall thereupon make an order appointing three persons as commissioners, who, before they enter on the discharge of their duties, shall take an oath or affirmation honestly and impartially to execute the trust reposed in them, and shall then proceed to view and appraise all the lands and real estate mentioned in the petition, and ascertain and set off the widow's dower therein, and apportion and divide the residue, according to quality and quantity, among the children or heirs, agreeably to their respective shares, giving to each his or her part, in one contiguous body, or as nearly so as may be.

Commissioners to make report, when.

SEC. 58. The commissioners shall make a full report of their proceedings to the court appointing them, at the next term thereof, and set forth and describe by metes and bounds the land assigned as dower to the widow, and the portions apportioned to each heir; which report may, for good cause be set aside, and other commissioners appointed, who shall proceed as hereinbefore directed.

May be set aside, &c.

Report to be confirmed and judgment rendered, when.

SEC. 59. If no such cause be shown, the report shall be confirmed, and the court shall give judgment thereon as provided in the case of the partition of lands lying in the same or two contiguous counties, and the effect of the judgment shall be the same; and a copy of such report and judgment shall be recorded in the recorder's office of each county wherein any of the lands or real estate is situate.

If land not susceptible of division, proceedings.

SEC. 60. If, in the opinion of the commissioners, the lands and real estate are not susceptible of division, without great prejudice to the owners thereof, the commissioners shall report that fact to the court, and the case shall be dismissed.

Vacancies, how filled.

SEC. 61. In case of the death, resignation, neglect or refusal to act of any of the commissioners to be appointed by virtue of this act, before the duties, trust and services hereby required of them shall be completed, the court, or judge thereof in vacation, may appoint another commissioner or commissioners, who shall be vested with the like power and authority as if he or they had been originally appointed.

Compensation of commissioners.

SEC. 62. The commissioners to be appointed in pursuance of this act, shall be entitled to receive, from the person or persons making application for partition as aforesaid, the sum of one dollar and fifty cents, for every day they shall be employed in effecting such division.

Majority of commissioners have power to act.

Sec. 63. A majority of the commissioners, in all cases under this act, shall have power to act, and all sales made under any of the provisions of this act shall be made by the sheriff of the county.

Appeals and writs of error allowed.

Sec. 64. On all final judgments to be given upon partition made, or upon any order of sale of the premises mentioned in any petition, it shall be lawful for any of the parties to such judgment to appeal, or bring a writ of error thereon, within the same time and under the restrictions and regulations applicable to other cases.

Power of district courts to make partition of slaves and personal property.

Sec. 65. The several district courts of this territory shall have full power and authority to make partition of slaves and other personal property among heirs, legatees, joint tenants, and tenants in common, in the same manner, upon the same terms, and with the like effect, as is provided in the foregoing sections in regard to the partition of real estate.

If it appear to the court that partition cannot be made in kind, sale may be ordered.

Sec. 66. If, in any case, from the nature and amount of the property, real or personal, sought to be divided, and the number of the owners, it shall be apparent to the court that partition thereof in kind cannot be made without great prejudice to the owners, an order of sale may be made without the appointment of commissioners. (*d*)

This act to take effect and be in force from and after its passage.

CHAPTER 122.

PATROLS.

An act concerning patrols.

§ 1. Tribunal to appoint patrols.
2. Company to consist of how many.
3. Duty of patrol.
4. To visit negro quarters, &c.
5. When slaves are found strolling about, to be whipped.
6. Compensation of patrols.
§ 7. Captain of patrol to be notified of his appointment.
8. Penalty on captain of patrol for neglect of duty.
9. This act not to affect slaves in certain cases.

(*d*) On the subject of partition, see the cases of Chouteau et al. vs. Paul, 3 Missouri Rep., 186; Waddingham et al. vs. Gamble, 4 *ib.*, 465; McCabe vs. Heirs of Hunter, 7 *ib.*, 355; Millington vs. Millington, *ib.*, 446.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Tribunal to appoint patrols.

SECTION 1. The tribunal transacting county business shall, from time to time, when to them it shall seem proper, appoint in each township in their respective counties, one or more companies of patrol, to continue in office one year.

Company to consist of how many.

SEC. 2. Each company shall consist of one discreet person, to be called the captain of the patrol, and as many others under his direction as the tribunal shall deem it necessary to appoint, who shall be severally sworn to perform the duties assigned them by this act.

To take an oath.

Duty of patrol.

SEC. 3. The patrol, so appointed, shall patrol as many hours in each month as the court appointing them shall direct, not less than twelve hours in each month within the bounds assigned them.

To visit negro quarters, &c.

SEC. 4. The patrol shall visit negro quarters, and any other places, suspected of unlawful assemblages of slaves.

When slaves found strolling about, to be whipped.

SEC. 5. Any slave found at such assembly, or who shall be found strolling about from one plantation to another, without a pass from his master, mistress or overseer, shall receive any number of lashes, at the discretion of the patrol, not exceeding ten, or, if taken before a justice of the peace, such slave shall receive any number of lashes, at the discretion of the justice, not to exceed twenty.

Compensation of patrols.

SEC. 6. Persons appointed as patrols, and performing the duties as such, shall be paid such sum as the county tribunal may allow, not exceeding twenty-five cents per hour for the time which said patrol shall be employed in the discharge of their duties; to be ascertained by the report of the captain of the said company of patrol, which report he is hereby required to make upon oath or affirmation, before any such allowance shall be made.

Captain of patrol to be notified.

SEC. 7. The captain of the patrol shall be notified of his appointment by the appointing tribunal, and shall be furnished by the same with a list of his men, who shall be subject to the orders of the captain, according to the provisions of this act.

Penalty on captain of patrol for neglect of duty.

SEC. 8. Whenever the captain of a patrol shall wilfully fail or neglect to discharge the duties required to be performed by him in the preceding sections, he shall forfeit and pay not less than three nor more than ten dollars, to be recovered for the use of the county, by action of debt, in the name of any person who shall sue to the use of the county.

This act not to affect slaves in certain cases.

SEC. 9. This act shall not be so construed as to prevent or affect any slave directly going to, or returning from, divine worship on the sabbath day.

This act to take effect and be in force from and after its passage.

CHAPTER 123.

PEDDLERS.

An act to license and tax peddlers.

§ 1. Who declared to be a peddler.
2. Not to deal without license.
3. What the license shall state.
4. Clerk to issue blank licenses.
5. Tribunal to settle with collector.
6. Who may obtain peddler's license.
7. Rates of tax on license.
8. Penalty for dealing contrary to law.
9. Who deemed a clock peddler.
§ 10. Penalty for dealing as clock peddler without license.
11. Penalty for refusing to exhibit license.
12. Information to be given.
13. Justice shall issue warrant to arrest.
14. Duty of justice in the matter.
15. Limitation.
16. Any person may deal as book peddler without license.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who declared to be a peddler.

Section 1. Whoever shall deal in the selling of goods, wares and merchandise, other than the growth, produce or manufacture of this territory, by going from place to place, to sell the same, is declared to be a peddler.

Not to deal without license.

Sec. 2. No person shall deal as a peddler without a license, and no two or more persons under the same license, either as partners, agents or otherwise, and no peddler shall sell wines or spirituous liquors.

What the license shall state

Sec. 3. Every license shall state the manner in which the dealing is to be carried on, whether on foot or with one or more beasts of burden, of the kind of cart or carriage, or, if on the water, the kind of boat or vessel to be employed.

Clerk to issue blank licenses.

Sec. 4. The clerk of the tribunal transacting county business shall, from time to time, issue under the seal of his court as many blank peddler's licenses, of the several kinds, as may be necessary, delivering the same to the collector of the county, and charge such collector therewith.

Tribunal to settle with collector.

Sec. 5. The tribunal transacting county business shall, at each regular term thereof, settle with the collector of the county on account of such licenses, and charge him with all the licenses not returned, and give him credit for such as are returned, and said tribunal shall cause the amount thus charged against such collector to be certified to the auditor of public accounts.

Who may obtain license.

Sec. 6. Any person may obtain a peddler's license by application to the collector of the county in which he intends to carry on his trade, and by paying the amount levied on such license.

Rates of tax on license.

Sec. 7. There shall be levied and paid on all peddler's licenses (except clock peddlers,) a territorial tax of the following rates: *First*—If the peddler travel and carry his goods on foot, three dollars for every period of six months; *second*, if on one or more horses, or other beasts of burden, ten dollars for every period of six months; *third*, if in a cart or other land carriage, twenty dollars for every period of six months; *fourth*, if in a boat or other river vessel, at the rate of one dollar per day for every period of not less than five days. And such license may be renewed, at the expiration of the first license, for any period not greater than six months, on payment of fifty cents a day; the number of days to be specified in such license.

Penalty for dealing contrary to law.

SEC. 8. Every person who shall be found dealing as a peddler, contrary to law or the terms of his license, shall forfeit, if a foot peddler, the sum of ten dollars; on one or more beasts of burden, twenty-five dollars; in a cart or other land carriage, fifty dollars; in a boat or other vessel, one hundred dollars.

Who are deemed clock peddlers.

SEC. 9. Every person who shall deal in selling, exchanging, bartering, leasing, hiring or lending clocks, or who shall dispose of the same by any kind of artifice, device or contrivance whatever, in order to evade this act, by traveling from place to place, shall be deemed a clock peddler and shall have a special license for that purpose, which may be obtained in the same manner and by the same means above provided in case of peddlers of merchandise: there shall be levied and paid on every clock peddler's license fifty dollars for the term of every six months.

Penalty for dealing as clock peddler without license.

SEC. 10. Every person who shall deal as a clock peddler, without a special license for that purpose, shall, on conviction, forfeit not less than fifty dollars, nor more than four hundred dollars, and be imprisoned until the fine and costs are paid.

Penalty for refusing to exhibit license.

SEC. 11. Every peddler shall, upon the demand of any sheriff, collector, constable, or citizen householder of the county, produce his license and allow the same to be read by the person making the demand, and in default thereof shall forfeit the sum of ten dollars.

Information to be given.

SEC. 12. When any person shall be found dealing as a peddler without a license, or contrary to the terms of his license, it shall be the duty of every assessor, collector, sheriff and constable, of the proper county, to give, and every citizen householder may give, information thereof, to some justice of the peace, without delay.

Justice may issue warrant to arrest.

SEC. 13. The justice shall issue his warrant, directed to the sheriff or any constable of the county, and cause the offender to be arrested and brought before himself, or some other justice of the peace of the county.

Duty of justice in the matter.

SEC. 14. If, upon examination, the justice shall find the accused guilty of the offence charged, he shall require him to enter into a recognizance with sufficient security for his appearance at the next term of the district court, on the first day thereof, to answer to any indictment that may be preferred against him; and in default of such recognizance, the justice shall commit the offender to the common jail of the county.

Limitation.

SEC. 15. All prosecutions, under this act, shall be commenced within six months after the commission of the offence.

May deal as book peddler without license.

SEC. 16. Any person may deal as a peddler, in the selling of books, maps, charts and stationery, without obtaining a license therefor.

This act to take effect and be in force from and after its passage.

* * *

CHAPTER 124.

PENAL BONDS.

An act to regulate actions on penal bonds.

§ 1. Plaintiff, in his declaration, shall set out condition of bond and assign breaches.
2. What defendant may plead in bar.
3. On payment of principal, interest and costs, action shall be discontinued.
4. Judgment, how rendered.
5. In what action specific breaches shall be assigned.
6. Jury to assess damages for breach.
7. Inquiry of damages to be awarded; when.
8. Verdict and judgment; proceedings thereon.
9. Form and direction of execution.
10. Judgment for the penalty to remain as security for damages for further breaches.
11. On further breach, plaintiff to have a *scire facias.*
12. Proceedings to obtain damages.
13. Effect of execution; how proceeded on.
14. If assignment of breach is found to be not true, it shall be a bar to another *scire facias*, &c.
15. Suits on official bonds to be in the name of the territory, &c.
16. Pleadings and proceedings in such actions.

§ 17. Judgment for defendant shall be a bar to suit on same bond, &c., by same relator.
18. Any party aggrieved may sue on such bond; effect of pendency of the suit.
19. Person who recovered judgment may again prosecute an action on such bond.
20. No *scire facias* shall be brought on judgment by same or other relator.
21. Suit to use of party aggrieved deemed a private suit; relator reliable for costs.
22. Suits not barred by plea of judgment recovered by security, unless accompanied by allegation, &c.
23. When defendant shall be discharged from all further liability.
24. Proceedings in estimating the amount of surety's liability.
25. Judgment and execution; how satisfied.
26. Proceedings, if there are several judgments.
27. Execution upon several judgments; money how apportioned.
28. Who may bring suit under this act, and against whom suit may be brought.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Plaintiff in his declaration shall

SECTION 1. In all actions brought upon bonds in which there set out condition of bond, and assign breaches

is a condition or defeasance by which the same is to become void on the payment of a less sum, the plaintiff shall set out the condition in his declaration, and may assign as many breaches as he may think proper. (*a*)

What defendant may plead in bar.

SEC. 2. The defendant in such action may plead payment of the principal sum, and interest due by the condition of such bond, before the commencement of such action, although the payment was not strictly according to such condition.

On payment of principal, interest and costs, action discontinued.

SEC. 3. Whenever any action shall be pending on such bond, the defendant may, at any time before judgment rendered in such action, pay to the plaintiff, or bring into court for the plaintiff's use, the principal sum and interest due on such bond, together with costs in such action, and thereupon such action shall be discontinued.

Judgment how rendered.

SEC. 4. If judgment be recovered on any such bond, such judgment shall be rendered for the sum really due, according to such condition with interest and costs, and execution shall issue thereon accordingly.

In what action specific breaches shall be assigned.

SEC. 5. When an action shall be prosecuted in any court of law upon any bond for the breach of any condition other than the payment of money, or shall be prosecuted for any penal sum for the non-performance of any covenant or written agreement, the plaintiff, in his declaration, shall assign the specific breaches for which the action is brought.

Jury to assess damages for breach.

SEC. 6. Upon the trial of such actions, if the jury find that any assignment of such breach is true, they shall assess the damages occasioned by the breach, in addition to their finding, or any other question of fact submitted to them.

Inquiry of damages to be awarded, when.

SEC. 7. If, in such action, the plaintiff shall obtain judgment upon demurrer by confession, or default, or *nil dicit*, the court shall make an order therein that the truth of the breach assigned be inquired into, and the damages sustained thereby be assessed at the same or the next term, and the court shall proceed therein in the same manner as in other cases of inquiry of damages.

Verdict and judgment, proceedings thereon.

SEC. 8. In every such action, if the plaintiff recover, the verdict assessing the damages shall be entered on the record, and judgment shall be rendered for the penalty of the bond, or for the penal sum forfeited, as in other actions of debt, together with costs of suit, and with a further judgment that the plaintiff have execution for the damages so assessed, which damages shall be specified in the judgment.

(*a*) *Vide* Clamorgan & Lisa vs. Guisse *et al.*, 1 Missouri Rep., 144; Fulkerson vs. Steen, 3 Missouri Rep., 377, and 1 *ib.* 57; State to use, &c., vs. Woodward, 8 Missouri Rep., 353; Moore & Hunt vs. Platte county, 8 Missouri Rep., 467.

Form and direction of execution.

SEC. 9. The execution on such judgment shall be in the usual form in actions of debt, reciting the recovery and directing the sheriff to levy the amount of damages so assessed (which amount shall be stated), with interest thereon from the time of such assessment and the costs of such suit.

Judgment for the penalty to remain as security for damages for further breaches, &c.

SEC. 10. The judgment rendered for the penalty of the bond sued on, or for the penal sum forfeited, shall remain as a security for any damages that may be thereafter sustained by the further breach of any condition of such bond, or the non-performance of any other covenant or written agreement by the defendant, the performance of which was secured by such penal sum.

On further breaches, plaintiff to have a *scire facias.*

SEC. 11. Whenever such further breaches shall occur, the plaintiff or his personal representative may have a *scire facias* upon such judgment, suggesting such breaches against the defendant and all parties bound thereby, and commanding that they be summoned to show cause why execution should not be had upon such judgment for the amount of the damages sustained by such further breaches.

Proceedings to obtain damages.

SEC. 12. The like proceedings to ascertain such damages shall be had upon such writ as hereinbefore provided in the first instance, and if the plaintiff recover, judgment shall be rendered that the plaintiff have execution to collect the amount of damages assessed and costs.

Effect of execution; how proceeded on

SEC. 13. The execution issued on such judgment shall have the like effect, and be proceeded on in all things as in the first instance, but the judgment shall remain as a security for further breaches, and so on as often as occasion may require.

If assignment of breach is found to be not true, it shall be a bar to another *scire facias.*

SEC. 14. Whenever, in any action brought according to the provisions of this act, the jury shall find that any assignment of breach is not true, the same shall be a bar to any other or further suit by *scire facias*, or otherwise, for the recovery of any damages alleged to have been sustained by occasion of the same breaches so assigned.

Suits on official bond to be in the name of the territory, &c.

SEC. 15. In all cases where, by law of this territory, any person is authorized to prosecute a suit to his own use on any official bond, he shall sue in the name of the territory or other obligee named in the bond, stating in the process, pleadings, proceedings and record in such action, that the same is brought in the relation and to the use of the person so using.

Pleadings and proceedings in such actions.

SEC. 16. In such action the same pleadings and proceedings shall be had as before provided in cases of suits upon bonds, with conditions other than for the payment of money, except as hereinafter otherwise provided.

Judgment for defendant shall be a

SEC. 17. A judgment for the defendant in such action shall bar to suit on same bond, &c., by same relator.

be a bar to any other suit that may be brought on the same official bond, by the same relator, for any delinquency or default which was assigned as a breach of the condition of such bond in the action on which such judgment was rendered.

Any party aggrieved may sue on such bond.

Sec. 18. Any other party aggrieved may, in like manner, prosecute an action on such official bond; and the pendency of any suit, at the relation of any other person on such bond, or a judgment recovered by or against any other person on such bond, shall not abate or in any manner affect such suit, or the proceedings thereon, except as herein provided.

Person who recovered judgment may again prosecute an action on such bond.

Sec. 19. Any person who may have recovered any judgment upon such official bond, may, in like manner, again prosecute an action on such bond whenever he is aggrieved by any default or delinquency other than such as shall have been the subject of the former suit, and shall proceed therein as hereinbefore provided.

No *scire facias* on judgment by same or other relator.

Sec. 20. No *scire facias* shall be brought upon any judgment rendered upon such official bond, by the same or any other relator, for any breach of the condition of the bond.

Suit to use of party aggrieved, deemed a private suit.

Relator liable for costs.

Sec. 21. Every suit brought upon such official bond to the use of the party aggrieved, and every judgment thereon, shall be deemed the private suit and judgment of the relator, in the same manner in every respect as if he were the nominal plaintiff, and such relator shall be liable to costs as other plaintiffs.

Suits not barred by plea of judgment recovered by security, unless, &c.

Sec. 22. No such suit shall be barred, nor shall the amount which the plaintiff may be entitled to recover be affected, by any plea made by any surety in such bond of a judgment recovered thereon, unless it be accompanied by an allegation that the sureties, or some of them, have been obliged to pay the damages on such judgment, or some part thereof, for want of sufficient property of the principal thereon to levy the same, or that they will be obliged to pay the same, or part thereof, for the same reason, nor unless such plea be verified by oath or affirmation.

When defendant shall be discharged from all further liability.

Sec. 23. If it appear that the amount of damages so recovered, which a surety has been or will be obliged to pay, as specified in the last section, is equal to the amount for which such defendant shall be liable by virtue of the bond, he shall be acquitted and discharged from all further liability, and judgment shall be rendered in his favor.

Proceedings in estimating amount of security's liability.

Sec. 24. If it shall appear that the damages so recovered, and which such surety has been or will be obliged to pay, is not equal to the amount of his liability, the amount thereof shall be allowed to him in estimating the extent of his liability in any such action.

Judgment and ex-

Sec. 25. Whenever a judgment shall be obtained on an official bond against principal and securities, a direction shall be endorsed on the execution, by the plaintiff or his attorney, to levy the amount, in the first place, on the property of the principal; and if sufficient property of such principal cannot be found to satisfy such execution, then to levy the deficiency on the property of the sureties.

ecution, how satisfied.

SEC. 26. If several judgments be obtained at the same term upon any official bond for damages amounting in the whole to more than the sum for which the sureties therein are liable, the court shall order the money levied on such judgments from the property of the sureties to be distributed to the relators respectively on such judgments, in proportion to the amount of their respective recoveries.

Proceedings if there are several judgments.

SEC. 27. If executions be issued upon such several judgments obtained at the same term, and sufficient money shall not be made to satisfy all the executions, the court shall distribute the money collected thereon to the relators in proportion to their respective recoveries.

Executions upon several judgments, money how apportioned.

SEC. 28. The provisions of this act in relation to suits on official bonds shall apply as well as to suits on bond of executors, administrators, guardians, curators and others required by law to give bond with condition for the performance of any duty or trust, as to suits on bonds of officers; and the persons aggrieved may prosecute suits in the same manner and with the like effect, and be subject in all respects to the provisions herein contained in respect to suits on official bonds, and the courts shall possess the same power in relation to such suits. (*b*)

Who may bring suits under this act, and against whom suits may be brought.

This act to take effect and be in force from and after its passage.

(*a*) *Vide* Clark vs. Murphy, 1 Missouri Rep., 115; an action of covenant will not lie on an administrator's bond. See State, to use of Crawford & Adams, vs. Woodward *et al.*, 8 Missouri Rep., 353; covenant will not lie on a penal bond conditioned to be defended by the performance of collateral conditions.

CHAPTER 125.

PERPETUATING TESTIMONY.

An act concerning perpetuating testimony.

Article I. Of taking depositions to perpetuate testimony.
II. Of establishing boundaries.

ARTICLE I.

Of taking depositions to perpetuate testimony.

§ 1. Depositions may be taken to perpetuate testimony, when.
2. A commission, on petition, shall be granted; by whom.
3. By whom and how issued; to whom directed.
4. Notice of the time and place of taking depositions to be given.
5. Notice, upon whom served in certain cases. Guardian *ad litem* may be appointed.
6. Publication of notice to persons residing without the territory.
7. Summons to witnesses, how and by whom issued.
§ 8. Duty of justices or clerk.
9. Questions put to witnesses, to be reduced to writing by the justice or clerk.
10. Answers of witnesses to be reduced to writing.
11. Power of adjournment.
12. Depositions, how certified and to whom delivered.
13. May be sent by mail or otherwise, when.
14. Duty of clerk on receiving such depositions.
15. In what cases such depositions, legally taken, may be read.
16. All legal exceptions may be taken to such depositions.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Depositions may be taken to perpetuate testimony, when.

Section 1. The depositions of witnesses to perpetuate testimony may be taken where any person is a party, or expects to be a party, to a suit pending, or about to be commenced, in any court of this territory, and the object is to perpetuate the remembrance of any fact, matter or thing necessary to the recovery or security of an estate, real or personal, or any other personal right.

A commission on petition shall be granted, by whom.

Sec. 2. A commission shall be granted to take such depositions by any judge of the probate court, on a petition in writing, supported by the affidavit of the applicant, setting forth the facts intended to be proved, the names of the individuals whose testimony is desired, and the place or places of their residence.

By whom and how issued; to whom directed.

Sec. 3. The commission shall be issued by the clerk of the court in which the judge granting the same presides, and, being witnessed by the clerk and the seal of his court, shall be directed to any two justices of the peace, or to the clerk of any probate court, being in the county where such testimony is to be taken, requiring such justices or clerks to take the depositions of the witnesses therein named.

SEC. 4. The party applying for the commission shall give notice in writing of the time and place of taking such depositions, to every person who may be known to be interested, his or their agent or attorney, at least thirty days before the taking of the same, and a copy of the petition, and affidavit upon which the commission was granted, shall accompany such notice.

Notice of the time and place of taking depositions to be given.

SEC. 5. In case the person interested be a married woman, the notice shall be served on the husband; if a minor, on the guardian of such minor; and a guardian *ad litem* may be appointed by the judge granting the commission, when there is no guardian.

Notice upon whom served in certain cases.

SEC. 6. The publication of such notice in some newspaper printed in this territory, at least three weeks consecutively, the last insertion to be twenty days before the day of taking the depositions, shall be sufficient notice to all persons residing without the territory; *provided*, said notice is given in one of the newspapers of the county where the suit is pending, or if there is no newspaper printed in the said county, then in that newspaper nearest where the party for whose benefit the testimony is taken resides.

Publication of notice to persons residing without the territory.

SEC. 7. The justices or clerk may issue a summons to such witnesses, requiring them to appear and testify at a time and place therein named, and may enforce obedience thereto by attachment.

Summons to witnesses, by whom issued.

SEC. 8. The justices or clerk shall attend at the time and place appointed for taking such depositions.

Duty of justices or clerk.

SEC. 9. If it shall appear to such justices or clerk that notice has been given as required by this act, such justices or clerk shall then and there reduce to writing all the questions put to the witnesses by the party desiring such depositions, and also all the questions put by all and every person attending who shall feel interested, who shall have liberty to examine and cross-examine the witnesses.

On legal notice given, questions to be reduced to writing.

SEC. 10. Such justices or clerk shall also reduce to writing all the answers of the witnesses to such questions, and all such questions and answers shall be written in the English language, or the language of the witness if he does not understand the English language, and being distinctly read to such witness, shall be sworn to and subscribed by such witness.

Answers of witnesses to be reduced to writing.

SEC. 11. The justices or clerk shall have power to adjourn from day to day the taking of such depositions, when the same shall be necessary.

Power of adjournment.

SEC. 12. The justices or clerk, taking such depositions, shall attach thereto his or their certificate, stating the time and place,

Depositions how certified, and to whom delivered.

when and where such depositions were taken; that the witnesses where duly sworn as to the truth of their depositions, and that they subscribed the same; and shall enclose them, together with the commission and the evidence of notice, and, the whole being carefully sealed up, shall be delivered by the justices, or one of them, or clerk, to the clerk of the probate court of the county in which the suit is pending, or in which the property or matter is situate or belongs, to which such depositions relate.

May be sent by mail or otherwise, when.

Sec. 13. If any justice or clerk, taking such depositions, reside at such distance from the clerk's office where such depositions properly belong as to prevent an immediate delivery thereof, then it shall be lawful to send the same by mail, or other safe conveyance.

Duty of recorder on receiving such depositions.

Sec. 14. The recorder of the county where such depositions properly belong, shall, on receiving the same, endorse the manner of their transmission, and shall make his certificate on the back of the depositions, that the same, together with the accompanying papers, naming them, were by him duly recorded, and deliver the original depositions and accompanying papers to the party on whose petition the commission issued.

In what cases such depositions, legally taken, may be read.

Sec. 15. Depositions taken and certified in conformity to the preceding provisions of this act, or duly certified copies of the record of such depositions, may be used and read as evidence in any case to which they relate: *First*, if the deponent be dead; *second*, if he be unable to give testimony by reason of insanity, or imbecility of mind; *third*, if he be rendered incompetent by judgment of law; *fourth*, if he be removed so that his testimony cannot be obtained.

All legal exceptions may be taken.

Sec. 16. All legal exceptions may be taken and allowed to the reading of such depositions on any trial, at law or in equity, in which the same may be offered in evidence.

ARTICLE II.

Of establishing boundaries.

§ 1. If corners of land be in a perishable condition, survey may be made.
2. Duty of surveyor in placing corner stones or posts.
3. To make out a plat and certificate of survey; its contents.
4. Corners destroyed or obliterated by time or accident, may be established by testimony, how.
§ 5. Duty of justices in procuring attendance of surveyor and witnesses.
6. Justices to proceed to the examination, when and where.
7. Justices have power to adjourn from day to day.
8. Examination of witnesses to be reduced to writing.

§ 9. Notice of taking depositions under five preceding sections, how given.
10. Evidence of notice required before justices proceed.
11. County surveyor, if required, to place a stone or post at decayed corners, &c.
12. Shall make a plat and certificate of survey.
§ 13. Shall record the same, and deliver the original and depositions to the recorder.
14. Recorder shall record the same.
15. Plats, certificates and depositions, and certified copies of the same, evidence.
16. Costs attending proceedings under this act, how paid.

SECTION 1. Any person, his agent or attorney, owning or being interested in any tract of land within this territory, any corner or corners of which shall be in a decayed or perishable condition, may require the surveyor of the county to make a survey thereof.

If corners of land be perishable, survey may be made.

SEC. 2. Such surveyor shall cause to be planted, by the person requiring such survey, at each of such decayed corners, a stone or post, and noting particularly the situation and condition of the corner trees called for in the original survey, and all the places of notoriety over or by which the lines of such survey may pass.

Duty of surveyor in placing corner stones or posts.

SEC. 3. He shall make out a plat and certificate of such survey, under his hand, nothing the names of the chainmen, marker, and other persons present at the planting of any corner stone or post, and the variations from the original lines at the time of making such survey.

To make out a plat and certificate of survey; its contents.

SEC. 4. When the corner or corners of any survey shall have been destroyed or obliterated by time or accident, the owner of such survey, or of any other lands, the title of which may be affected by the loss of such corner, may call on two disinterested justices of the peace of the county in which the land shall be situate, for the purpose of establishing such corners by testimony.

Corners destroyed by time or accident, may be established by testimony, how.

SEC. 5. Such justices shall, upon application, issue their warrant to any constable or sheriff of the county, to cause to come before them, at a place on the land and on a day to be designated in the warrant, the county surveyor and such witnesses, as well without as within the county, as the person demanding such warrant, or other persons interested, may require.

Duty of justices in procuring surveyor and witnesses.

SEC. 6. Such justices shall, on the day appointed, proceed to the place designated, and there, in the presence of the county surveyor, examine the witnesses summoned, and others attending, touching the existence or situation of such destroyed or obliterated corners, or any other matter in relation to the entry or survey of such lands, or of the corners or boundaries of any adjoining lands, when the same may be necessary or conducive to the accomplishment of the object of the application.

Justices to proceed to the examination, when and where.

SEC. 7. Such justices shall have power to adjourn, from day to day, when the same may be necessary to the accomplishment of the examination.

Justices have power to adjourn.

Examination to be reduced to writing.

Sec. 8. Such justices shall reduce the examinations of the witnesses to writing, which shall be signed and sworn to by the deponents, and being certified and signed by the justices, shall be by them delivered to the county surveyor.

Notice, how given.

Sec. 9. The same notice shall be given previous to taking depositions, under the five preceding sections, in all respects as is required to be given by the fifth and sixth sections of the first article of this act.

Evidence of notice required before justices proceed.

Sec. 10. Satisfactory evidence of such notice shall be required by the justices before they proceed to take such depositions, which shall appear in their certificate annexed to their depositions.

County surveyor, if required, to place a stone or post at decayed corners, &c.

Sec. 11. The county surveyor shall, if required by the party owning or being interested in such survey, make a survey thereof, and cause to be planted a stone or post at each of the decayed or obliterated corners, and shall be governed in his survey and in planting such stone or post at the corners, by the depositions which shall have been taken and delivered to him in relation thereto.

Shall make a plat and certificate of survey.

Sec. 12. Such surveyor shall make out a plat and certificate of such survey, noting therein the corners at which he shall have planted stones or posts, the names of the chainmen, markers, and others present at the planting of the same, and that the same was done in accordance with the testimony contained in the depositions.

Shall record the same, and deliver the original and depositions to the recorder.

Sec. 13. He shall record such plat and certificate in a book to be by him kept and provided for that purpose, and shall deliver the original, with any depositions delivered to him, duly certified, to the recorder of the county.

Recorder shall record the same.

Sec. 14. The recorder, to whom such plat and certificate and depositions shall be delivered, shall record the same in a book to be by him provided and kept for that purpose, and shall deliver the original to him at whose instance the survey was made.

Plats, certificates and depositions and certified copies thereof, evidence.

Sec. 15. Plats and certificates of survey, and depositions to establish corners, or certified copies of the record thereof, when the same shall have been made or taken in conformity to the provisions of this act, may be used and received in evidence in all cases at law, or in equity, to which they may relate, subject to exceptions for irrelevancy or incompetency.

Costs, how paid.

Sec. 16. All fees and costs attending the proceedings under this law shall, in the first instance, be paid by the party on whose application the same shall be had, who may recover from persons who shall use, or be benefited by the same, their equal proportion of the expense incurred in obtaining it.

This act to take effect and be in force from and after its passage.

CHAPTER 126.

POOR.

An act to provide for the support of the poor.

§ 1. The poor, by whom supported.
2. Definition of a poor person.
3. Who are deemed inhabitants.
4. Tribunal to make an order for the relief of the poor.
5. Relief discretionary.
6. Funeral expenses allowed.
7. May purchase land, &c.
§ 8. Poor-house may be erected on such land.
9. Superintendent to be appointed.
10. Duty of superintendent.
11. Powers of the tribunal.
12. Manner of levying poor tax.
13. Duty of treasurer.
14. To keep accounts separate.
15. Tribunal may remove superintendent.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

The poor, by whom supported.

Section 1. Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants.

Definition of a poor person.

Sec. 2. Aged, infirm, lame, blind or sick persons, who are unable to support themselves, shall be deemed poor persons.

Who deemed an inhabitant.

Sec. 3. No person shall be deemed an inhabitant, within the meaning of this act, who has not resided for the space of twelve months next preceding the time of any order being made respecting such person in the county.

Tribunal to make an order for the relief of the poor.

Sec. 4. The tribunal trasacting county business in each county, on the knowledge of the justice of such tribunal, or any of them, or on the information of any justice of any county in which any person entitled to the benefit of this act resides, shall from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief of such person.

Relief, discretionary.

Sec. 5. The tribunal transacting county business shall at all times use its discretion, and grant relief to all citizens who may require assistance.

Funeral expenses allowed.

Sec. 6. The tribunal transacting county business of the proper county shall allow such sum as it shall think reasonable for the expenses of any person who shall die within the county without the means to pay such funeral expenses.

May purchase land.

Sec. 7. The tribunal transacting county business shall have power, whenever they may think it expedient, to purchase any quantity of land, in their respective counties, not exceeding three hundred and twenty acres, and receive a conveyance to their county for the same.

Poor-house may be erected on such land.

Sec. 8. Such tribunal transacting county business may cause to be erected on the land so purchased, a convenient poor-house, and cause other necessary labor to be done, and repairs and improvements made, and may levy upon their respective counties such sums as will be sufficient to pay the purchase money and defray the necessary expenses.

Superintendent to be appointed.

SEC. 9. Whenever such poor-house is erected, the tribunal transacting county business shall have the power to appoint a fit and discreet person to superintend the same, and the poor who may be kept thereat, and to allow such superintendent a reasonable compensation for his services.

Duty of superintendent.

SEC. 10. Such superintendent shall have the power to cause persons kept at such poor-house, who are able to do useful labor, to perform the same by reasonable and humane coercion.

Power of tribunal.

SEC. 11. The tribunal transacting county business shall have power to make all necessary and proper orders and rules for the government of the poor kept at such poor-house, and for the supplying them with the necessary raw materials to be converted by their labor into articles of use, and for disposing of the products of such labor and applying the proceeds thereof to the support of the institution.

Manner of levying poor tax.

SEC. 12. The sum levied upon the county by virtue of the provisions of this act, shall be levied and collected in the same manner that county taxes are levied and collected, and the collector shall account for the same in the same manner, except that he shall pay over such sums as he may have collected at any time when demanded by the treasurer of the county.

Duty of treasurer.

SEC. 13. The treasurer of the county shall demand such funds whenever directed by the tribunal transacting county business, and his duty in relation thereto shall be the same as that prescribed by law in relation to other county funds.

Keep accounts separate.

SEC. 14. The treasurer shall keep the accounts of such funds separate from all other accounts.

Tribunal may remove superintendent.

SEC. 15. The tribunal transacting county business may at any time, for good cause, remove the superintendent and appoint another to fill the vacancy.

This act to take effect and be in force from and after its passage.

CHAPTER 127.

PRACTICE AT LAW.

An act to regulate practice at law.

Article I. Of the commencement of suits, and the service and return of process and notices.
II. Of proceedings by and against infants,
III. Of pleadings, interlocutory judgments and assessments of damages.
IV. Of trials and their incidents.
V. Of the abatement of suits, and their revival; of consolidating and referring actions.
VI. Of amending pleadings and proceedings.
VII. Of new trials, arrest of judgment, final judgments, and miscellaneous provisions.

ARTICLE I.

Of the commencement of suits and the service and return of process and notices.

§ 1. How suits at law may be instituted.
2. Declaration to be filed before writ issues.
3. Writ to be annexed to declaration or copy thereof, and delivered to officer.
4. Date of writ; when returnable to first, when to second term.
5. Suits by summons, in what cases, and where brought.
6. Suits by attachment, and where brought.
7. Defendants in different counties, suits may be brought in either.
§ 8. Defendant in attachment having property in several counties, writs may issue to each.
9. Original writ shall be a summons, unless, &c.
10. Summons, how executed.
11. Refusal to hear or receive a copy, deemed a sufficient service.
12. Officer to make return of writs, how.
13. By whom notice may be served in the commencement or progress of suits.
14. How served.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

How suits at law may be instituted.

Section 1. Suits at law may be instituted in courts of record, except when the statute law of this territory otherwise provides, either, *first*, by filing in the office of the clerk, a declaration setting forth the plaintiff's cause of action, and by the voluntary appearance of the adverse party thereto; or, *second*, by filing such declaration in such office, and suing out thereon a writ of summons against the person, or of attachment against the property of the defendant.

Declaration to be filed before writ issues.

Sec. 2. No such original writ shall be issued until the declaration be filed in the clerk's office.

Writ to be annexed to declaration, or copy thereof, &c.

SEC. 3. The writ, when issued, shall be endorsed upon, or annexed to the declaration, or a copy thereof; and the declaration, or a copy thereof together, with the writ, shall be delivered to the officer charged with the execution of the same. (*a*)

Date of writ, when returnable to first, when to second term

SEC. 4. Every such original writ shall be dated on the day it is issued, and shall be made returnable on the first day of the next term thereafter; but if the first day of such term be within fifteen days thereafter, then such writ shall be made returnable on the first day of the second term.

Suits by summons, in what cases and where brought.

SEC. 5. Suits instituted by summons shall be brought, *first*, when the defendant is a resident of the territory, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found; or, *second*, when the defendant is a non-resident of this territory, in any county within which the defendant may be found.

Suits by attachment, where brought.

SEC. 6. Suits commenced by attachment against the property of a person, shall be brought in the county in which such property may be found.

Defendants in different counties, suit may be brought in either, &c.

SEC. 7. When there are several defendants in a suit instituted by summons, and they reside in different counties, the suit may be brought in any such county, and a separate writ may be issued to each county against such of the defendants as reside therein.

Writs of attachment may issue to several counties, when.

SEC. 8. When a defendant in a suit instituted by attachment has property in several counties, separate writs may be issued to every such county, and every such writ shall be endorsed upon or annexed to a copy of the declaration.

Original writ shall be a summons, unless, &c.

SEC. 9. The original writ, in all cases where it is not otherwise provided by law, shall be a summons, which shall command the officer to be charged with the execution thereof, to summon the defendant to appear in court, on the return day of the writ, and at a place to be specified in such writ, to answer the complaint of the plaintiff. (*b*)

Summons, how executed.

SEC. 10. A summons shall be executed either, *first*, by reading the declaration and writ to the defendant; or, *second*, by delivering to him a copy of the declaration and writ; or, *third*, by leaving a copy of the declaration and writ at his usual place of abode, with some white person of the family over the age of fifteen years. (*bb*)

(*a*) A variance between the declaration and the writ cannot be taken advantage of by a motion to quash; Jones vs. Coxe, *et al.*, 7 Missouri Rep., 173; Freeman and Snowden vs. Camden, 7 Missouri Rep., 298.

(*b*) An original writ, requiring the defendant to appear before the judge of the circuit court, &c., to answer the demand, instead of to appear in court, &c., to answer the complaint of the plaintiff is sufficient; Payne vs. Collier and Pettus, 6 Missouri Rep., 321.

(*bb*) If notice of a writ be served by leaving a copy, it must appear to have been left with

Refusal to hear, or receive a copy, deemed a sufficient service.

SEC. 11. In all cases when the defendant shall refuse to hear such writ and declaration read, or to receive a copy thereof, the offer of the officer to read the same, or to deliver a copy thereof, and such refusal shall be a sufficient service of such writ.

Officer to make return of writs, how

SEC. 12. Every officer to whom any writ shall be delivered to be executed, shall make return thereof in writing, and shall sign his name to such return.

By whom notice may be served in the commencement or progress of suits.

SEC. 13. Whenever, in the commencement or progress of any suit it shall be necessary to serve any notice, such notice may be served, either, *first*, by an officer authorized by law to serve any original process of the court in which suit is to be brought or may be pending; or, *second*, by any person who would be a competent witness upon the trial of such suit.

How served.

SEC. 14. Every such notice may be served in like manner as a writ of summons, and the return of such service when made by an officer, or when made by a person other than an officer, and verified by the affidavit of such person, shall be received as evidence of the facts therein stated, subject to be repelled by contrary proof.

ARTICLE II.

Of proceedings by and against infants.

§ 1. Suits by infants, how commenced and prosecuted.
2. Next friend, by whom to be appointed.
3. To be made on petition of infant, and when written consent of person appointed.
4. Next friend to give bond, if required by officer; its condition.
5. Bond to be delivered to officer, and filed with the clerk, before appointment of next friend shall be made.
§ 6. Petition for next friend, his consent and order of appointment to be filed.
7. Guardian or next friend responsible for costs.
8. Suits against infants not to proceed till guardian be appointed.
9. How and by whom appointed.
10 Defendant failing to procure appointment of guardian, shall appoint one.
11. Guardian not liable for costs, unless, &c.

Suits by infants, how commenced.

SECTION 1. Suits by infants may be commenced and prosecuted either, *first*, by the guardian of such infant; or, *second*, by a next friend appointed for him in such suit. (*c*)

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a white person of the family; Dobbins vs. Thompson, 4 Missouri Rep, 118; *vide* Spencer vs. Meder, 5 Missouri Rep., 458; Atwood vs. Reyburn, 5 Missouri Rep., 533.

(*c*) An infant cannot appear by attorney, and if it appear by attorney, as well as next friend, it will be error. Every plaintiff and defendant will be taken to be of full age till the point is made and evidence heard, and a judgment against an infant will be good until reversed; Jeffrie vs. Robideaux, 3 Missouri Rep., 33; but see section 7, of article 6, of this act, 7th sub-division. The refusal to dismiss a cause from the docket because there was no evidence to prove that the person styling himself next friend was such, after pleading to the merits, is no ground of error; Montgomery vs. D'Lashmutt & Tipton, 1 Missouri Rep., 446.

Next friend, by whom appointed.

SEC. 2. The appointment of such next friend shall be made by the court in which the suit is intended to be brought, or by a judge or clerk thereof.

To be made on petition of infant and written consent of person appointed.

SEC. 3. It shall be made on the petition in writing of such infant, and the written consent of the person proposed to be next friend to such infant, acknowledged before or proved to the court or officer making the appointment.

Next friend to give bond if required by officer.

SEC. 4. Before any person shall be appointed next friend for an infant, in any suit to recover any personal property, debt or damage, he shall, if required by the officer to whom application for such appointment shall be made, execute a bond to such infant in double the amount claimed in such suit, with such securities as shall be approved by such officer, conditioned that such next friend shall account to such infant for all money or property which may be recovered in such suit.

Its condition.

Bond to be delivered to officer and filed with the clerk.

SEC. 5. Such bond shall be delivered to such officer before the appointment shall be made, and shall be filed in the office of the clerk of the court in which the suit is to be brought.

Petition for next friend, his consent and order of appointment to be filed, where.

SEC. 6. The petition for the appointment of next friend, the written consent of the person proposed to be next friend, and the order of the appointment, shall be filed in the office of the clerk of the court where the suit is proposed to be brought, before any proceedings shall be had in the cause.

Guardian or next friend responsible for costs.

SEC. 7. The guardian or next friend of any infant, who commenced or prosecuted a suit, shall be responsible for the costs thereof.

Suits against infants not to proceed till guardian be appointed.

SEC. 8. After the commencement of a suit against an infant defendant, and the service of process upon him, the suit shall not be prosecuted any further until a guardian for such infant be appointed.

How and by whom appointed.

SEC. 9. Such appointment shall be made upon the request of the defendant, and on the written consent of any competent person proposed as guardian, by the court in which the suit is pending, or by a judge thereof in vacation, and shall be filed in the office of the clerk of the court before any plea by such infant shall be filed.

Defendant failing to procure appointment of guardian, court shall appoint one.

SEC. 10. If such infant defendant neglect, for one day after the first day of the term at which he is bound to appear to the suit, to procure the appointment of a guardian to defend the suit, the court shall appoint some competent person to be guardian for such infant in the defence of such suit.

Guardian not liable for costs, unless, &c.

SEC. 11. No person appointed guardian for the purpose of defending a suit against an infant, shall be liable for the costs of such suit, unless specially charged by the order of the court for some personal misconduct in such cause.

ARTICLE III.

Of pleadings, interlocutory judgments and assessments of damages.

§ 1. Defendant served with process fifteen days before return day, shall appear, &c; if less than fifteen days, when to appear.
2. Several defendants, some served with process fifteen days before return day, and others not, how to proceed.
3. Suit shall not be delayed longer than one term to bring in others, without consent.
4. No *essoin* or wager of law allowed, &c.
5. Parties may prosecute in person or by attorney.
6. Warrant of attorney, not necessary, except, &c.
7. Pleadings to be signed, time of filing endorsed; and if filed in term, a minute shall be made thereof.
8. Pleas in abatement to be on oath.
9. Pleas, when to be filed.
10 Replications to be filed within 30 days.
11. Subsequent pleadings, when to be filed.
12. Pleadings filed in vacation, copies to be served.
13. *Similiters* and joinders in demurrer may be filed at any time.
14. Court may extend the time for filing pleadings.
15. Person not to be prejudiced by ancient terms and forms of pleading.
16. No demurrer sustained, if pleading be sufficient in substance.
17. Duplicity, or want of profert when necessary, a substantial objection.
18. Demurrers may be joint and several; and sustained as to part of the pleadings and overruled as to the residue.
19. Pleas in abatement, dilatory pleas and demurrers, when to be determined.
20. Party having cause of action against several, may sue all or part.
21. Plaintiff in actions on contract not to be non-suited for failing to prove that all the defendants are parties.
22. Suit may be maintained on lost instrument; excuse for want of profert to be alleged, &c.

§ 23. Profert shall be made and *oyer* given.
24. Action of debt for money received contrary to any statute, what allegations sufficient in the declaration.
25. Assumpsit for money received contrary to any statute, what allegations sufficient in the declaration.
26. Trover or detinue for property received contrary to statute, what sufficient to set forth in the declaration.
27. How a defendant may plead.
28. Executors or administrators not personally liable, by reason of pleading a false plea.
29. Payment may be plead in bar, when.
30. In actions against public officers, &c., general issue may be plead, and special matter given in evidence.
31. Also in actions against other persons assisting such officers.
32. Pleadings in defence in actions against persons for acts done by authority of any statute.
33. Replication that defendant acted without authority of any statute.
34. On trial, the whole matter to be given in evidence.
35. When court may allow replication and rejoinder of several matters.
36. Failing to file pleadings within the legal time, interlocutory judgment, by default, to be given.
37. Such judgment may be set aside for good cause.
38. Plaintiff failing to reply, &c., judgment of *non pros.* to be given.
39. Such judgment may be set aside.
40. Several defendants, and some appear and plead, and others make default; proceedings.
41. Interlocutory judgment by default, *nil dicit*, &c., shall be made final if demand be liquidated.
42. In other cases of interlocutory judgments, writ of inquiry of damages shall be awarded, at what term.

When defendant shall appear to the suit.

SECTION 1. Every defendant served with process (*d*) fifteen days before the return day thereof, shall appear (*e*) to the suit

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(*d*) The want of service of a writ is cured by appearance and defence; Griffin and Kinote vs. Samuel, 6 Missouri Rep., 50; *vide* Lutes & Dulany vs. Perkins, *ib.*, 57. It is error to enter judgment against a party who has not been served with process, and does not answer to the action; Bascom impleaded with Mylius vs. Young, 7 Missouri Rep., 1. A judgment rendered against a party who had no notice of the proceedings, is utterly void; Smith vs. Ross & Strong, 7 Missouri Rep., 403; *vide* Whiting & Williams vs. Budd, 5 Missouri Rep., 443.

(*e*) Bartlett vs. McDaniel, 3 Missouri Rep., 55; Barnett and Ivers vs. Lynch, *ib.*, 369.

at the return term of the writ; and when such process shall be served less than fifteen days, he shall appear at the term next after the return term of such writ.

Several defendants, some served with process 15 days before return day and others not, how to proceed.

SEC. 2. When there are several defendants in a suit, and some of them are served with the process fifteen days before the return day thereof, and others of them are not served, or not in due time, the plaintiff may discontinue as to all not served, or not served in due time, and proceed against those who are bound to appear; or he may continue the suit until the next term, and take new process against those that are not served.

Suit shall not be delayed longer than one term to bring in others, &c.

SEC. 3. But at such second term the suit shall proceed against all who shall have been served in due time, and no further delay shall be allowed to bring in the others, unless all that appear shall consent to such delay.

No *essoin* or wager of law allowed, &c.

SEC. 4. No *essoin* or wager of law shall be allowed, nor shall any suit be deferred or delayed by reason of non-age of any of the parties.

Parties may prosecute and defend, how.

SEC. 5. Parties may prosecute and defend their own suits in proper person, or by an attorney or counsellor of the court.

Warrant of attorney not necessary, &c.

SEC. 6. It shall not be necessary to file any warrant of attorney to appear in any court for either party to an action brought therein, except in cases where it shall be specially required by law. (*f*)

Pleadings to be signed, time of filing endorsed, &c.

SEC. 7. Every declaration and other pleadings shall be signed by the party or his attorney, and the clerk shall endorse thereon the day upon which it shall be filed, and, if filed in term, shall make an entry thereof upon the minutes.

Pleas in abatement to be on oath.

SEC. 8. No plea, in abatement or other dilatory plea not involving the merits of the action, shall be received, unless it be verified by the affidavit of the party offering the same, or some other credible person.

Pleas when to be filed.

SEC. 9. Every plea to the merits of the action shall be filed on or before the sixth day of the term at which the party pleading the same is bound to appear, if the term shall so long continue; and if not, then before the end of such term. (*g*)

Replications to be filed within thirty days.

SEC. 10. Replications shall be filed within thirty days after the commencement of the term at which the defendant is bound to appear. (*h*)

(*f*) A suit instituted without any authority from the person in whose name it is conducted, should be dismissed; and upon a suitable suggestion of facts, the attorney will be required to show some authority, either verbal or written, for conducting the suit; Keith vs. Wilson, 6 Missouri Rep., 436.

(*g*) Whiting & Williams vs. Budd, 5 Missouri Rep., 443; Cave & Morris vs. Hall, administrator, 5 Missouri Rep., 59.

(*h*) Dempsey vs. Harrison & Glasgow, 4 Missouri Rep., 267. Action of trespass, defendants pleaded severally *liberum tenementum*, and jointly, the same plea as to one, and license as to

Subsequent pleadings, when to be filed

SEC. 11. All subsequent pleadings shall be filed within such time and in such manner as shall be prescribed by the rules of practice of the court. (*i*)

Pleadings filed in vacation, copies to be served.

SEC. 12. A copy of every replication and subsequent pleading, filed in vacation, shall, within fifteeen days after the filing thereof, be served on the adverse party or his attorney.

Similiters and joinders in demurrer may be filed, when.

SEC. 13. *Similiters* and joinders in demurrer may be filed at any time, and without serving a copy thereof upon the adverse party or his attorney. (*j*)

Court may extend the time for filing pleadings.

SEC. 14. The courts, upon good cause shown, and for the furtherance of justice, may extend the time prescribed in this act for filing any pleading, upon such terms as shall be just. (*k*)

Persons not to be prejudiced by ancient terms and forms.

SEC. 15. No person shall be prejudiced by the ancient terms and forms of pleading, so that the matter fully appear in the process, declaration, or other pleading.

No demurrer sustained if pleadings sufficient in substance.

SEC. 16. No demurrer shall be sustained, when offered either by plaintiff or defendant to any part of the pleadings, if the statement contained in such pleadings substantially apprise the adverse party of the point or points intended to be relied on, and amount to a substantial cause of action or defence.

Duplicity, &c., substantial objection.

SEC. 17. Duplicity, or want of profert when necessary, is a substantial objection to the declaration or other pleadings.

Demurrers may be joint and several, and sustained as to part of pleadings, and overruled as to the residue.

SEC. 18. Demurrers may be joint and several, and may be sustained as to a part of the pleadings demurred to, and overruled as to the residue, according to the circumstances of the case; with like effect and in all respects as if a separate demurrer had been filed to each pleading so demurred to. (*l*)

Pleas in abatement, and dilatory pleas, and demurrers, when to be determined.

SEC. 19. All pleas in abatement, and other dilatory pleas not involving the merits of the cause, and all demurrers, shall be determined during the term at which they are filed; and when filed in vacation shall be determined at the term next after the filing thereof. (*m*)

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the other, plaintiff inadvertently failed to reply to the last plea in term time, and at the next term judgment was entered for defendants; held, that as the last plea required two replications, which could not be filed without leave of the court, and especially as the plea was unnecessary, the court should have permitted the plaintiff to reply at the subsequent term. Matthew vs. Boas & Murphy, 6 Missouri Rep., 597. When replications are not filed within the time prescribed by the statute, and no objections are made to the filing of them after that time, and no motion made for a judgment of *non pros*; after verdict for plaintiff, it is too late to raise the objection; Magehan vs. Orme & Speers, 7 Missouri Rep., 4; *vide* Buford, administrator, vs. Byrd, 8 Missouri Rep., 240.

(*i*) Bates vs. Hinton, 4 Missouri Rep., 78.

(*j*) Hubble vs. Patterson, 1 Missouri Rep., 392.

(*k*) The failure of a defendant to serve the plaintiff with a copy of his pleas, (in pursuance of an agreement giving defendant further time to plead,) is waived by the plaintiff pleading over; Cave & Morris vs. Hall, administrator, 5 Missouri Rep., 59.

(*l*) Risher vs. Thomas, 1 Missouri Rep., 739; Dempsey vs. Glasgow & Harrison, 4 Missouri Rep., 270; *vide* Marshall vs. Bouldin, 8 Missouri Rep., 244.

(*m*) The usual practice is to determine demurrers during the term at which they are filed, Party having cause of action against several, may sue all, or part.

SEC. 20. Every person that shall have a cause of action against several persons, and be entitled by law to only one satisfaction therefor, may bring suit thereon jointly against all or as many of the persons liable as he may think proper. (*n*)

Plaintiff in actions in contract not to be non-suited for failing to prove that all the defendants are parties.

SEC. 21. In all actions founded on contract, and instituted against several defendants, the plaintiff shall not be non-suited by reason of his failure to prove that all the defendants are parties to the contract, but may have judgment against such of them as he shall prove to be parties thereto. (*o*)

Suit may be maintained on lost instrument; excuse for want of profert to be alleged, &c.

SEC. 22. An action at law may be maintained on any instrument of writing, notwithstanding it may be lost or destroyed; and, in every such action, no profert of such instrument shall be required, but the party shall allege the loss or destruction as an excuse for the want of profert; and every such allegation shall be considered a material averment in the case of such party. (*oo*)

Profert shall be made and oyer given, when.

SEC. 23. When any declaration, or other pleading, shall be founded upon any instrument of writing charged to have been executed by the other party, or his testator or intestate, or other person represented by such party, and not therein alleged to be lost or destroyed, profert therefor shall be made, and oyer given. (*p*)

Action of debt for money received

SEC. 24. In an action for debt, brought to recover any money

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though they are sometimes continued by consent; and in a case, Risher vs. Thomas, cited and approved in Dempsey vs. Glasgow & Harrison, supra, where a demurrer to two pleas had been continued, and, at the next subsequent term, the plaintiff withdrew it as to one of the pleas, and filed a replication, (see section 1, article 4, of this act,) the supreme court held that the defendant was entitled to a continuance, as a matter of course; and the same practice prevails, whether a demurrer is continued or not, in cases where the demurrer is filed at the trial term, as in cases of petition in debt, where there has been a personal service of process, and in common law actions on bonds, bills and notes, where there has been personal service twenty days before the return day. The general practice in regard to demurrers, whether general or special, is understood to be, that when a demurrer is sustained, the party to whose pleadings it is sustained, asks leave, before judgment is entered on the demurrer, to amend, which generally is granted of course, and which, in effect, arrests the judgment upon the demurrer. And when the demurrer is overruled, the party demurring asks leave, before judgment is entered, to withdraw his demurrer, and plead, reply, or rejoin, as the case may require which is generally granted of course; see section 1, article 6, of this act.

(*n*) A judgment against one of two several obligors, without satisfaction, is no bar to an action against the other; Armstrong vs. Prewett, 5 Missouri Rep. 476.

(*o*) This section is the substance of the first section of an act passed on the 13th Feb., 1839, by the Mo. Legislature, and the supreme court held, in reference to that enactment, (Campbell & Mason vs. Hood, 6 Missouri Rep., 211,) that, if a plaintiff includes a person in his suit, whether *ex contractu* or *ex delicto*, against whom there is no evidence, the court may direct the jury to find a verdict as to such person, and he may then be used as a witness. But there must be an entire want of testimony to justify the court in allowing a party this privilege; *vide* Brown vs. Pearson, 8 Missouri Rep., 159. This section is applicable to suits against partners, when a note has been executed by one in the name of the firm, without the express or implied authority of the other; Finney vs. Allen, 7 Missouri Rep., 416.

(*oo*) See section 1, article 1, of the act to regulate practice in courts of chancery, and also Miller and others vs. Wells, 5 Missouri Rep., 10.

(*p*) *Vide* Kearney vs. Woodson & Trigg, administrators, 4 Missouri Rep., 114; also 1 Missouri Rep., 502, 356; Fields vs. Hunter, 8 Missouri Rep., 123.

received by any person contrary to the provisions of any statute, it shall be sufficient for the plaintiff, without setting forth the special matter, to allege in his declaration that the defendant is, or that his testator or intestate was indebted to the plaintiff, according to the provisions of such statute, naming the subject matter thereof, or referring to the statute in some general terms.

contrary to any statute, what allegations sufficient in declaration.

Sec. 25. If an action of assumpsit be brought for money received contrary to the provisions of any statute, it shall be sufficient for the plaintiff, without setting forth the special matter, to allege, in his declaration, that the same was received contrary to the provisions of such statute, referring to the same as prescribed in the last section.

Assumpsit for money received contrary to statute, what allegations sufficient.

Sec. 26. If any action of trover or detinue be brought for any property received contrary to the provisions of any statute, it shall be sufficient for the plaintiff to set forth in his declaration, that such property was converted by the defendant, or his testator or intestate, or is unlawfully detained by the defendant, contrary to the provisions of such statute, referring to the same as prescribed in the two preceding sections.

Trover or detinue for property received contrary to statute, what shall be set forth in the declaration.

Sec. 27. The defendant, in any action, may plead as many several pleas as he shall think necessary for his defence, subject to the power of the court to compel him to elect by which plea he will abide, in cases where he may plead inconsistent pleas.

How defendant may plead.

Sec. 28. Persons sued as executors or administrators, and as sureties of executors or administrators, shall not be made personally liable in any action, nor shall persons sued as executors of their own wrong, be made liable to a greater extent than they otherwise would be, by reason of any such executor or administrator having pleaded any false plea.

Executors and administrators not personally liable by reason of pleading a false plea.

Sec. 29. When any action shall be brought upon a bond, or upon a judgment, or when a *scire facias* is brought upon a judgment, the defendant may plead payment of the amount due upon such bond or judgment, in bar of such action or writ. (q)

Payment may be plead in bar, when.

Sec. 30. In every action brought against any public officer of this territory, or against any person specially appointed, according to law, to execute the duties of any such public officer, for or concerning any act done by such officer or person by virtue of his office or appointment, the defendant may plead the general issue, and give the special matter in evidence.

In actions against public officers, &c. general issue may be plead and special matter given in evidence.

Sec. 31. In every action brought against any other person, who, by the command of such officer or person, or in their aid and assistance, does any thing touching the duties of such office

Also, in actions against other person assisting such officer.

(q) A party cannot plead any matter to a *scire facias* on a judgment, which he might have plead to the original action; Watkins vs. the State, 7 Missouri Rep., 334.

or appointment, the defendant may plead the general issue, and give the special matter in evidence.

Pleadings in defence in actions against persons for acts done by authority of any statute.

SEC. 32. In every action brought against any person for any act done by authority of any statute of this territory, the defendant may plead not guilty, or may make justification of the act done, alleging therein that the same was done by the authority of such statute, naming the subject matter thereof, or referring thereto in some other manner with convenient certainty, without expressing any matter contained in such statute.

Replication that defendant acted without authority of any statute

SEC. 33. To every such plea the plaintiff may reply, that the defendant did the act complained of without authority of any statute of this territory.

On trial, whole matter given in evidence.

SEC. 34. Upon the trial of any issue so joined, the whole matter may be given in evidence by both parties.

When court may allow replication and rejoinder of several matters.

SEC. 35. Whenever it shall become necessary to the attainment of justice, to allow a plaintiff to reply several matters to a plea of the defendant, (*r*) or to allow a defendant to rejoin several matters to the replication of a plaintiff, the court in which the action shall be pending, on the application of the party desiring to reply or rejoin, may allow the same to be done.

Failure to file pleadings within the legal time, &c , interlocutory judgment by default to be given.

SEC. 36. If the defendant shall fail to file his plea or other pleading within the time prescribed by law or the rules of practice of the court, and serve a copy thereof upon the adverse party, or his attorney when the same is required, an interlocutory judgment shall be given against him by default. (*s*)

Such judgment may be set aside for good cause.

SEC. 37. Such judgment may, for good cause shown, be set aside at any time before the damages are assessed, upon such terms as shall be just. (*t*)

Judgment of *non pros* to be given, when.

SEC. 38. If the plaintiff shall fail to file his replication, or other pleading, within the time prescribed by law, or the rules of

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(*r*) *Vide* Matthews vs. Boas & Murphy, 6 Missouri Rep., 597.

(*s*) Hanley vs. Dewes, 1 Missouri Rep., 16; Hickman vs. Barnes, 1 Missouri Rep., 156. Error in taking judgment by default before the time of pleading expires is not cured by opening the judgment on the motion of the plaintiff, unless the defendant has notice thereof; Currin vs. Ross & Glasgow, 2 Missouri Rep., 203; Dempsey vs. Harrison & Glasgow, 4 Missouri Rep., 267. Where pleas have been put in, and issue joined, the court cannot give a judgment by default; the judgment should be on the finding of the issues; Elliott vs. Leake, 4 Missouri Rep., 540.

(*t*) In an affidavit to set aside a judgment by default, the defendant should state that he has, or that he believes he has merits; Barry vs. Johnson, 3 Missouri Rep.. 372; but see Elliott vs. Leake, 4 Missouri Rep., 540, where it is said that such an affidavit should contain a positive averment of merits. Something more than an affidavit of merits is necessary to authorize the circuit court to set aside a judgment by default. The "good cause" required to be shown, must not only be a meritorious defence, but the exercise of all due diligence by the party; Green vs. Goodloe, 7 Missouri Rep., 25; *vide*, also Weimer vs. Morris, 7 Missouri Rep., 6, and Lecompte and wife vs. Wash, 4 Missouri Rep., 557. An affidavit, on motion to set aside a judgment by default, stating that the defendant, was advised, &c., without stating that he was advised by his counsel, is insufficient; Lecompte vs. Wash, supra; *vide* Hickman vs. Barnes, 1 Missouri Rep., 156, and Boisse vs. Langham, 1 Missouri Rep., 572.

practice of the court, and to serve the adverse party or his attorney, with a copy thereof, when the same is required, judgment of *non pros* shall be given against him. (*u*)

Such judgment may be set aside.

SEC. 39. Such judgment may, for good cause shown, be set aside at any time during the term at which it shall be given, upon such terms as shall be just.

Several defendants, and some appear and plead and others make default, proceedings.

SEC. 40. When there are several defendants in a suit, and some of them appear and plead, and others make default, an interlocutory judgment, by default, may be entered against such as make default, and the cause may proceed against the others; but only one final judgment shall be given in the action.

Interlocutory judgment by default, *nil dicit*, &c., shall be made final if demand be liquidated.

SEC. 41. Whenever an interlocutory judgment shall be rendered for the plaintiff, by default, by *nil dicit*, by confession, or upon demurrer, in any suit founded upon any instrument of writing, and the demand is ascertained by such instrument, the court shall assess the damages, and final judgment shall be given thereon. (*v*)

In other cases of interlocutory judgment, writ of inquiry of damages shall be awarded; at what term.

SEC. 42. But in all other cases of such interlocutory judgment, the damages shall be assessed by a jury impanneled in the court for that purpose, and every such inquiry of damages shall be made at the term next after the term in which such interlocutory judgment shall be rendered, unless the court direct it to be made at the same term.

ARTICLE IV.

Of trials and their incidents.

§ 1. When there are several issues of law and fact, issues of law to be first determined.
2. Causes to be continued at first term; to be determined at second term.
3. Court may continue causes, when and upon what terms.
4. Application for continuance to be accompanied by affidavit.
5. On second application, affidavit must state the facts, &c.
6. If affidavit refuse to set forth facts or opposite party to admit them, no continuance allowed.
7. Power of courts to compel the production of books, papers and documents.
§ 8. Proceedings to entitle a party to an order for such production.
9. For what reasons such order may be vacated.
10. Party neglecting to obey such order, may be non-suited, his plea and notice of set-off be stricken out, and barred of his defence relating to such books, papers, &c.
11. Power of court in such cases limited to the remedies provided by this act.
12. Discovery, as in equity, may be had by either party.
13. Discovery, how applied for.
14. Order for discovery, when to be made.

(*u*) Mathews vs. Boas & Murphy, 6 Missouri Rep., 586.

(*v*) Dent vs. Morrison, 1 Missouri Rep., 130; McCutchen vs. Batterton, 1 Missouri Rep., 342; Maupin vs. Triplett, 5 Missouri Rep., 422.

§ 15. Suit may be stayed till order be complied with or vacated.
16. Petition and order to answer shall be filed and served on adverse party.
17. Proceedings shall be as in a court of equity.
18. Answer to the evidence; effect thereof.
19. If party refuse to answer, petition shall be taken as confessed, and the facts stated given in evidence.
20. All issues of fact shall be tried either by the court, by a jury, or by referees; when, &c.
21. Imperfect counts in a declaration, may, on motion, be stricken out.
22. On such motion, what objections valid.
23. Instrument of writing on which suit is founded, to be received in evidence, unless denied on oath.
24. Last section not to apply to persons acting in a fiduciary capacity.
25. Bills of exception, how taken.
26. Court refusing to sign, to certify cause of refusal.
§ 27. May be assigned by three by-standers, if the court refuse.
28. Bill of exceptions shall form a part of the record.
29. If court refuse to permit bill signed by by-standers to be filed, affidavits to be taken.
30. Affidavits to be deposited with the clerk.
31. Court, on appeal or writ of error, to admit as part of the record the bill of exceptions thus taken.
32. Truth of such bill to be tried by the affidavits required by this act.
33. Non-suit not allowed after the case is submitted to a jury or the court.
34. Where a party is permitted to prove loss of instrument, by his own oath, &c., adverse party may be examined.
35. If negotiable note, or bill of exchange be lost, parol or other evidence of the contents thereof may be given, and party may recover.
36. Bond and security to be given to entitle the party to such recovery; condition of bond.

Issues of law to be first determined.

SECTION 1. When there are several issues of law and of fact in any suit, the issues of law shall be first determined. (w)

Causes to be continued at first term; to be determined at second term.

SEC. 2. Every suit that shall not be otherwise disposed of according to law, shall be continued at the term at which the defendant is bound to appear, until the next term thereafter, and at such second term every such suit shall be determined. (x)

Court may continue causes, when and upon what terms.

SEC. 3. Every court of record, in which any suit is pending, may at any term, for good cause shown, continue such suit until the next term, or any subsequent term; and every continuance granted upon the application of either party, shall be at the cost of such party, unless otherwise ordered by the court. (y)

(w) When there is a special demurrer, and a plea of payment to the declaration, the demurrer must be disposed of before judgment between the parties; and a judgment for the plaintiffs, when there is a plea of payment without a replication is erroneous; Menefee vs. D'Lashmutt & Starling, 1 Missouri Rep., 258; *vide* Ellis vs. Loumier *et al.*, 1 Missouri Rep., 260; the State vs. Gathier & Pearce, 1 Missouri Rep., 501. When a demurrer was filed to the declaration, but no judgment entered on the demurrer, and issue afterwards joined on a plea to the action, the supreme court will presume that the defendant withdrew his demurrer; Sweeny vs. Willing, 6 Missouri Rep., 174. The rule that when a demurrer is overruled, and not withdrawn, it remains on the record a confession of the facts set forth in the pleading demurred to, does not apply where the court does not give judgment on the demurrer, but suffers the parties to go before a jury on issues made up under the direction of the court; such subsequent action of the court amounts to an implied withdrawal of the demurrer; Dickey *et al.* vs. Malichi, 6 Missouri Rep., 178.

(x) A *scire facias* is a suit within the meaning of this section, and judgment cannot be rendered on it until the next term after the one at which the defendant is bound to appear; Milsap vs. Wildham, 5 Missouri Rep., 425.

(y) When a party uses due dilligence to procure testimony, and fails, and the court refuses a continuance, the supreme court will, for that cause, reverse the judgment; McLane vs. Harris, 1 Missouri Rep., 700; Riggs vs. Fenton, 3 Missouri Rep., 28; Moore & Porter vs. McCulloch, 6 Missouri Rep., 444. When a demurrer is withdrawn at the trial term, and a

Application for continuance to be accompanied by affidavit.

SEC. 4. Every application by a party for the continuance of a cause shall be accompanied by his affidavit, or the affidavit of some other credible person, setting forth the facts upon which the application is founded.

On second application, affidavit must state the facts, &c

SEC. 5. Whenever either party to an action shall make a second application for a continuance thereof on account of the absence of a material witness, the affidavit shall set forth the name of the witness, and the facts he is expected to prove, if the court require it.

If affiant refuses to set forth the facts, or opposite party admit them, no continuance allowed.

SEC. 6. If the affiant shall fail or refuse to set forth such facts when thereto required, or if the opposite party shall admit the truth of the facts when disclosed, and agree that they be received in evidence, the court shall refuse to continue the cause.

Power of courts to compel the production of books, papers, &c.

SEC. 7. Every court shall have power to compel any party to a suit pending therein, to produce any books, papers and documents, in his possession or power, relating to the merits of any such suit, or any defence therein. (*z*)

Proceedings to entitle a party to an order for such production.

SEC. 8. To entitle a party to the production of such books, papers and documents, he shall present a petition, verified by the affidavit of himself, or some other credible person, to the court, or to the judge thereof in vacation, upon which an order may be granted by such court or officer, for the production of such books, papers and documents, or that the party show cause why the prayer of the petition should not be granted.

For what reasons such order may be vacated.

SEC. 9. Every such order may be vacated by the court or officer granting the same, *first*, upon satisfactory evidence that it ought not to have been granted; *second*, upon the party required to produce the books, papers and documents, denying on oath, the possession or control thereof.

Party neglecting to obey such order, may be nonsuited, &c.

SEC. 10. If the party neglect to obey such order for the production of books, papers and documents, within such time as the court or judge shall prescribe for that purpose, the court may non-suit him, or strike out any plea or motion of set-off, or

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replication filed, the other party is entitled to a continuance, and it is error to refuse; Risher vs. Thomas, 1 Missouri Rep., 739; *vide* Dempsey vs. Glasgow & Harrison, 4 Missouri Rep., 267. The issuing of attachment against a witness is not a ground for continuance, unless it is made to appear that the witness cannot be procured until the next term; English vs. Mullanphy, 1 Missouri Rep., 780. The filing of a counter affidavit, in an application for a continuance, is a matter on which the law is silent, and is a matter of practice to be regulated by the circuit court; Riggs vs. Fenton, 3 Missouri Rep., 28. A motion for a continuance is addressed to the sound discretion of the court, and the court will be held to have exercised that, discretion soundly, unless it appear otherwise from the record; Scogin vs. Hudspeth, 3 Missouri Rep., 123; Steel vs. McCutcheon, 5 Missouri Rep., 522; Pratt vs. Rogers, 5 Missouri Rep., 51; Kizer *et al.* vs. Wilkes, 5 Missouri Rep., 519; *vide* Jones vs., Coxe *et al.*, 7 Missouri Rep. 173; Sumner vs. Whitley, 1 Missouri Rep., 708.

(*z*) When from the very nature of the case, the defendant has notice that the plaintiff intends to charge him with the possession of an instrument, no further notice to produce is necessary; Hart vs. Robinett, 5 Missouri Rep., 11.

debar him from any particular defence in relation to which such books, papers and documents were required to be produced.

Power of the court in such cases limited.

Sec. 11. The power of the court to compel such production of books, papers and documents shall be confined to the remedies herein provided, and shall not authorize any other proceedings against the person or property of the party refusing to comply with the order of the court or judge.

Discovery as in equity, may be had by either party.

Sec. 12. Either party to a suit, in any court of record, shall be entitled to a discovery from the other party of all matters material to the issue, in all cases where the same party would be, by the rules of equity, entitled to the same discovery in a court of equity, in aid of such suit. (*aa*)

Discovery how applied for.

Sec. 13. To entitle a party to such discovery, he shall present a petition, verified by the affidavit of himself, or some other credible person, to the court, or to a judge thereof in vacation, setting forth the matter upon which his claim to the discovery is founded, the facts sought to be discovered, and such interrogatories in relation thereto, as he shall think necessary to exhibit in order to attain a full discovery.

Order for discovery, when to be made; party to answer or show cause.

Sec. 14. The court, or any judge thereof in vacation, may, upon such petition, grant an order, requiring the party from whom the discovery is sought to answer the interrogatories exhibited in the petition, or such of them as it shall appear to the court or officer ought to be answered, or that he show good cause in court why he should not answer the same. (*bb*)

Suit may be stayed till order be complied with or vacated.

Sec. 15. Such court or officer may further order the trial of the suit to be stayed until the order be complied with or vacated.

Petition and order to answer shall be filed, &c.

Sec. 16. The petition and order to answer shall be filed in the office of the clerk of the court, and a copy thereof served on the other party or his attorney.

Proceedings shall be as in a court of equity.

Sec. 17. The same proceedings shall be had on the petition, and the court may exercise the same powers therein as would be had or might be exercised in a court of equity on a bill for a discovery in aid of a suit at law.

Answer to be evidence.

Effect thereof.

Sec. 18. The answer of the party to the interrogatories shall be evidence on the trial of the suit in the same manner and with like effect as an answer to a bill in equity for discovery. †

If party refuse to answer, petition shall be taken as confessed and facts stated given in evidence.

Sec. 19. If the party shall neglect or refuse to answer the interrogatories, and the petition shall, according to the course of proceeding in equity, be finally taken for confessed, the facts

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(*aa*) *Vide* Story's Equity Pleadings, 252 to 263, inclusive, 2nd edition; Smith vs. Anthony, 5 Missouri Rep., 505; Atwood vs. Reyburn, 5 Missouri Rep., 555; Price vs. Cannon, 3 Missouri Rep., 453; Dempsey vs. Harrison & Glasgow, 4 Missouri Rep., 267.

(*bb*) *Vide* Wilson, administrator, vs. Woodruff, 5 Missouri Rep., 40.

† Buckner vs. Armour, 1 Missouri Rep., 534; Yancy vs. Trammel, 3 Missouri Rep., 306; *vide* also section 30, article 2 of the act to regulate practice in courts of chancery.

stated in the petition and therein sought to be discovered may be given in evidence upon the trial as facts admitted by the party from whom the discovery is sought.

All issues of fact shall be tried either by the court, jury, or by referees, when, &c.

SEC. 20. All issues of fact joined in any suit in any court of record shall be tried either by the court, by a jury, or by referees: *First*, the trial shall be by the court when either party shall demand a trial by jury and the cause is not referred; *second*, it shall be by jury when neither party shall demand such trial and the cause is not referred; *third*, it shall be by referees when the court is authorized to refer the trial and shall have referred it accordingly. (cc)

Imperfect counts in declaration may, on motion, be stricken out.

SEC. 21. When there are several counts in a declaration and one or more of them shall be imperfect, the plaintiff, at any time before the jury is sworn or the trial submitted to the court, may move the court, upon reasonable notice to the adverse party, to strike out such imperfect counts.

On such motion, what objection valid.

SEC. 22. Upon such motion, no objection shall be valid that would not be valid after a finding of the issue for the plaintiff.

Instrument of writing on which suit is founded, to be received in evidence, unless denied on oath.

SEC. 23. When any declaration or other pleading shall be founded upon any instrument of writing charged to have been executed by the other party, and not alleged therein to be lost or destroyed, (dd) such instrument shall be received in evidence, unless the party charged to have executed the same deny the execution thereof by plea, verified by affidavit. (ee)

Last section not to apply to persons acting in a fiduciary capacity.

SEC. 24. The preceding section shall not be construed to authorize any instrument of writing to be received in evidence in any suit against an executor or administrator, or any other person representing the person charged to have executed such instrument.

Bills of exception, how taken.

SEC. 25. Whenever, in the progress of any trial, in any civil suit depending in any court of record, either party shall except to the opinion of the court, and shall write his exception, (ff) and

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(cc) See the act concerning arbitrations and references, and section 24, article 5, of this act.

(dd) See section 23, article 3, of this act.

(ee) Maupin vs. Triplett, 5 Missouri Rep., 422. In an action against the acceptor of a bill of exchange it is not necessary to prove his handwriting, unless it is denied by plea, verified by affidavit. Warne vs. Anderson & Thompson, 7 Missouri Rep., 46. But *quere* as to this, and see sections 2 and 3 of the act concerning bills of exchange.

(ff) Hill vs. Wilkins, 4 Missouri Rep., 86; Davidson vs. Peck, 4 Missouri Rep., 438; *vide* Davis vs. Davis, 8 Missouri Rep., 56. Where the evidence is not preserved in a bill of exceptions, the supreme court cannot determine whether the court below erred in refusing to grant a new trial or not; Searcy vs. Devine, 4 Missouri Rep., 626; Thompson *et al.* vs. Child, garnishee, 6 Missouri Rep., 162; Gale vs. Pearson, 6 Missouri Rep., 253. Where plaintiff suffers non-suit, and makes no motion to set aside, and no bill of exception is taken, the supreme court cannot undertake to reverse the decision of the court below; Robbins vs. Stephenson & Hord, 5 Missouri Rep., 105; Howell vs. Pitman, 5 Missouri Rep., 246; Atkinson vs. Lane, 7 Missouri Rep., 403. When a motion is made to set aside the judgment of the court below, pray the court to allow and sign the same, the person or persons composing the court, or the major part of them, shall, if such bill be true, sign the same. (*gg*)

Court refusing to sign, to certify cause of refusal.

SEC. 26. If they refuse to sign such bill on the account that it is untrue, they shall certify thereon, under their hands, the cause of such refusal.

May be signed by three bystanders, if court refuse.

SEC. 27. If the judges refuse to sign any bill of exceptions, such bill may be signed by three by-standers, who are respectable inhabitants of the territory, and the court shall permit every such bill (if the same be true) to be filed in court.

Bill shall form a part of the record.

SEC. 28. Every bill signed by the judges, or by the by-standers, and filed in court, shall form a part of the record of the cause in which it is filed.

If court refuse to permit bill signed by by-standers, to be filed, proceedings.

SEC. 29. When the judges shall refuse to permit any bill of exceptions signed by the by-standers to be filed, and shall have certified that it is untrue, either party in the suit may take affidavits, not exceeding five in number, in relation to its truth.

Affidavits to be deposited with the clerk.

SEC. 30. Such affidavits shall be taken and deposited in the clerk's office within five days after the trial of the cause, and on appeal, or writ of error, copies of such affidavits shall be annexed to, and form a part of, the record of the cause.

Courts, on appeal or writ of error, to admit as part of the record the bill of exceptions thus taken.

SEC. 31. Every court to which an appeal or writ of error shall be taken shall admit, as part of the record of the cause, every bill of exceptions taken therein upon its appearing satisfactorily to such court that the truth of the case is fairly stated

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and grant a continuance because of certain facts set forth in affidavits, the affidavits must be preserved in the bill of exceptions; Pratt vs. Rogers, 5 Missouri Rep , 51. Unless the bill of exceptions purports to recite the whole evidence in a cause, the supreme court cannot say whether the court below should have granted a new trial or not; Hughes vs. Ellison, 5 Missouri Rep., 110; Vaughn vs. Montgomery, *ib.*, 529; Gamble vs. Hamilton, 7 Missouri Rep., 469. After the introduction of a variety of proof on the part of plaintiff, defendant objected to whole and saved his exceptions in that form. Such a course is not legal; but the objection should be made to such particular parts as defendant deemed exceptionable, and at the time they were respectively offered; Waldo vs. Russel, 5 Missouri Rep., 387. To entitle a party to the benefit of objections to any proceeding in the circuit court, it should appear upon the record that the same objections were made in that court; steamboat Thames vs. Erskine & Gore, 7 Missouri Rep., 213. The evidence and proceedings in a cause cannot be reviewed in the supreme court unless they are preserved in a bill of exceptions; Crane vs. Taylor, 7 Missouri Rep., 285, and cases there cited. The supreme court will presume the circuit court decided correctly, unless the contrary appear from the facts and proceedings preserved in the bill of exceptions; Ingram vs. The State, 7 Missouri Rep., 293.

(*gg*) *Vide* the case of Withington vs. Young, 4 Missouri Rep., 564. A motion for a new trial was argued by briefs in writing before the judge of the St. Louis circuit court, whose commission expired before the motion was decided or a bill of exceptions signed. A bill of exceptions was presented to his successor, with the affidavits of the witnesses sworn and examined on the trial, stating the testimony given by them respectively. The latter judge signed the bill of exceptions and afterwards refused, and on the motion of the opposite party to strike the bill from the record—held that the latter judge had no right to sign the bill of exceptions without the consent of the opposite party, as the statute requires that exceptions to the opinion of the court shall be taken in the progress of the trial; Consaul vs. Lidell, 7 Missouri Rep., 250.

in such bill, that the same was taken according to law, and that the court refused to permit such bill to be filed.

Truth of such bill to be tried by affidavits.

SEC. 32. The truth of every such bill shall be tried by the affidavits required by this act to be taken and filed in the clerk's office.

Non-suit not allowed after the cause is submitted to a jury or the court.

SEC. 33. No plaintiff shall suffer a non-suit after the cause, upon a hearing of the parties, shall have been finally submitted to a jury or to the court, sitting to try the issue, for their decision.

When party is permitted to prove loss of instrument, by his own oath, &c., adverse party may be examined.

SEC. 34. Whenever a party to a suit shall have been permitted to prove, by his own oath, the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court, on oath, to disprove such loss and to account for such instrument.

If negotiable note or bill of exchange be lost, parol evidence of contents may be given, &c.

SEC. 35. In any suit founded upon any negotiable promissory note or bill of exchange, or in which such bill or note, if produced, might be allowed as a set-off in the defence of any suit, if it appear on the trial that such note or bill was lost while it belonged to the party claiming the amount due thereon, parol or other evidence of the contents thereof may be given on such trial, and such party shall be entitled to recover the amount due thereon as if such note or bill had been produced.

Bond and security to be given to entitle the party to such recovery.

SEC. 36. To entitle a party to such recovery, he, or some responsible person for him, shall execute a bond to the adverse party, in a penalty at least double the amount of such note or bill, with two securities, to be approved by the court in which the trial shall be had, conditioned to indemnify the adverse party against all claims by any other person on account of such note or bill, and against all costs and expenses by reason of such claims.

Condition of bond.

ARTICLE V.

Of the abatement of suits and their revival; of consolidating and referring actions.

§ 1. If more than one plaintiff, and one dies before judgment, action shall not abate.
2. Not to abate where there are two or more defendants, and one dies.
3. Death shall be stated upon the record, and the action proceed.
4. If but one plaintiff, and he die, action not to abate, but may be continued, how.
5. If but one defendant, and he die, suit not to abate, but may be continued by his legal representatives, how.
§ 6. If party die after verdict, but before judgment, proceedings.
7. Construction of the preceding section.
8. When executor or administrator die or cease to act, suit not to abate.
9. Such suit may be continued by administrator *de bonis non.*
10. When executor's or administrator's defendant die or cease to act, suit not to abate.
11. Such suit may be continued against administrator *de bonis non.*
12. Female plaintiff marrying before judg-

ment, husband to be made co-plaintiff.
§ 13. Husband to be made co-defendant, when.
14. Action by public officer, death or resignation not to abate the suit, if cause of action survive, &c.
15. Orders for introducing co-plaintiff or co-defendant, how made.
16. Orders for the purpose of substituting parties in place of the original parties, how made.
17. *Scire facias* for introducing new party, how sued out, executed and returned.
18. Limitation of time to sue out *scire facias* in such cases.
§ 19. Person substituted, or made co-plaintiff or co-defendant, entitled to continuance.
20. Cause in such cases to proceed as between original parties.
21. Suits, when to be consolidated.
22. Several suits for causes of action that may be joined, costs in such cases, how paid.
23. Court may refer cause to referees, with consent of parties, when.
24. May refer cause to referees without consent of parties, when the trial will require the examination of a long account.

If more than one plaintiff, and one die before judgment, action shall not abate.

SECTION 1. If, in any action, there be two or more plaintiffs, and one or more of them die before the final judgment, the action shall not thereby be abated if the cause of such action survive to the surviving plaintiff or plaintiffs.

Not to abate, when there is more than one defendant.

SEC. 2. When there are two or more defendants, and one of them shall die before final judgment, such action shall not thereby be abated.

Death shall be suggested and action proceed.

SEC. 3. In either of said cases such death shall be stated upon the record, and the action shall proceed at the suit of the surviving plaintiff, or against the surviving defendant, as the case may require.

If but one plaintiff and he die, action not to abate, but may be continued, how.

SEC. 4. When there is but one plaintiff in an action, and he shall die before final judgment, such action shall not thereby be abated if it might be originally prosecuted by the heirs, devisees, executors or administrators of such plaintiff; but such of them as might prosecute the same cause of action originally may continue such suit, upon the order of the court substituting them as plaintiffs therein.

If but one defendant, and he die, suit not to abate, but may be continued by his legal representatives, how.

SEC. 5. When there is but one defendant in an action, and he shall die before final judgment, such action shall not thereby be abated, if it might be originally prosecuted against the heirs, devisees, executors or administrators of such defendant; but such of them as might be originally prosecuted for the same cause of action, shall, on the application of the plaintiff, be made defendants in such suit, by an order of the court substituting them as defendants therein.

If party die after verdict, but before judgment, proceedings.

SEC. 6. After a verdict shall be rendered in any action, and after a plea of confession in any suit brought, if either party die before judgment be actually entered thereon, the court may, within one term after such verdict or plea, enter final judgment in the name of the original parties.

Construction of the preceding section.

SEC. 7. Nothing in the preceding section shall be construed to authorize the entry of a judgment against any party who shall have died before a verdict actually rendered against him, notwithstanding he may have died on the first, or any other day of the term at which such verdict shall have been rendered; but such verdict shall be void.

When ex'r or administrator die or cease to act, suit not to abate.

SEC. 8. When an executor or administrator shall be plaintiff in any suit, and, before final judgment, shall die, or cease to be such executor or administrator, the suit shall not thereby be abated.

Such suit may be continued by administrator *de bonis non.*

SEC. 9. Such suit may be continued by the person succeeding such plaintiff in the administration of the same estate, upon an order of the court substituting the person so succeeding as plaintiff therein.

When ex'r or administrator die or cease to act, suit not to abate.

SEC. 10. When an executor or administrator shall be defendant in any suit, and, before final judgment, shall die, or cease to be such executor or administrator, the suit shall not thereby be abated.

Such suit may be continued against administrator *de bonis non.*

SEC. 11. Such suit may be continued against the person succeeding such defendant, in the administration of the same estate, upon an order of the court substituting the person so succeeding as defendant therein.

Female plaintiff marrying before judgment, husband to be made co-plaintiff.

SEC. 12. If a female plaintiff marry before final judgment, her husband, on his own application, may, by the order of the court, be made a co-plaintiff with her in the suit.

Husband to be made co-defendant, when.

SEC. 13. If a female defendant marry before final judgment, her husband, either on his own application, or on the application of the plaintiff, may, by the order of the court, be made a co-defendant in the suit.

Action by public officer, death or resignation not to abate the suit if the cause of action survive.

SEC. 14. When an action is directed or authorized by law to be brought by, or in the name of, a public officer, his death or removal from office shall not abate the suit if the cause of such suit survive to his successor, but the same may be continued by his successor upon the order of the court substituting him as plaintiff therein.

Orders for introducing a co-plaintiff, or co-defendant, how made.

SEC. 15. All orders made for the purpose of introducing into a suit a new person, as a co-plaintiff or co-defendant with the original party, shall be made, either upon the voluntary appearance of both the original parties in such suit, or after the service upon them of a *scire facias.*

Orders for the purpose of substituting parties in place of the original parties, how made.

SEC. 16. All orders made for the purpose of substituting any person as plaintiff or defendant, in place of the original defendant or plaintiff, shall be made, either upon the voluntary appearance of the adverse original party, or after the service upon such party of a *scire facias.*

Scire facias for introducing new party, how sued out, executed and returned.

Sec. 17. All such writs of *scire facias* may be sued out in term time or vacation, may be directed to any county in the territory, shall correspond as near as practicable with writs of summons, and may be executed and returned in the same manner.

Limitation of time to sue out a *scire facias* in such cases.

Sec. 18. No *scire facias*, for the purpose of substituting a person as plaintiff or defendant in any suit, in the place of the original plaintiff or defendant, shall be sued out after the expiration of the third day of the second term next after the term in which the death or disability of the original party shall be stated upon the record.

Persons substituted or made co-plaintiff, or co-defendant, entitled to continuance.

Sec. 19. When any person is made a co-plaintiff or co-defendant, or is substituted as plaintiff or defendant in the place of the original party in any of the cases provided for in this article, such new party shall be entitled to a continuance of the cause until the next term.

Causes in such case to proceed as between original parties.

Sec. 20. In all such cases where a person is made a co-plaintiff or co-defendant, or is substituted as plaintiff or defendant in the place of the original party, the cause shall proceed in all respects as if such person had been an original party to the suit.

Suits, when to be consolidated.

Sec. 21. Whenever several suits shall be pending in the same court, by the same plaintiff against the same defendant, for causes of action which may be joined, or whenever several suits are pending in the same court, by the same plaintiff against several defendants, that may be joined, the court in which the same shall be prosecuted may, in its discretion, if it appear expedient, order such suits to be consolidated into one action.

Several suits for causes of action that may be joined, costs in such case, how paid.

Sec. 22. When any plaintiff shall bring in the same court several suits against the same defendant, for causes of action that may be joined, and when any plaintiff shall bring in the same court several suits against several defendants that may be joined, the plaintiff shall recover only the costs of one action, and the costs of the other actions shall be adjudged against him, unless sufficient reason appear to the court for bringing several actions.

Court may refer cause to referees, with consent of parties, when.

Sec. 23. Whenever an action shall be at issue in any court of record, such court may, with the consent of the parties thereto, in its discretion, order such cause to be referred to one or three impartial and competent men. (*hh*)

May refer cause to referees without consent of parties, when.

Sec. 24. When it shall appear to the court, that the trial of such action will require the examination of a long account on either side, such court may, without such consent, make the same order of reference. (*ii*)

(*hh*) See the act concerning arbitrations and references, and section 20, article 4, of this act.

(*ii*) *Ibid.*

ARTICLE VI.

Of amending pleadings and proceedings.

§ 1. Court has power to amend any pleading or proceeding, either in form or substance.
2. Pleading amended in substance, party allowed time to answer.
3. After judgment; what proceedings may be amended in affirmance, &c.
4. Variance in record, how amended.
5. Returns by officers or any court may be amended, how and by whom, as well before as after judgment.
6. Imperfections or defects in the award of venire, may be amended or supplied.
§ 7. Imperfections and omissions enumerated for which certain judgments shall not be stayed or reversed.
8. The omissions, imperfections, defects, &c., in preceding section, may be supplied, or amended, when.
9. Process, pleading, or record, not to be amended or impaired by the clerk without the order of court.
10. To what actions, writs, &c., this article shall extend; shall not extend to indictments, or informations in any criminal matter.

Court has power to amend any process, pleading, or proceeding, either in form or substance.

SECTION 1. The court in which any action may be pending, shall have power to amend any process, pleading, or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be just, at any time before final judgment rendered therein. (*jj*)

Pleading amended in substance, party allowed time to answer

SEC. 2. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer the pleading so amended.

After judgment, what proceedings may be amended in affirmance, &c.

SEC. 3. After judgment rendered in any cause, any defects or imperfections in matters of form, contained in the record, pleadings, process, entries, returns, or other proceedings in such cause, may be amended and rectified by the court in affirmance of the judgment, and such judgment shall not be reversed or annulled. (*kk*)

Variance in record, how amended.

SEC. 4. Any variance in the record from any process, pleading, or proceeding had in such cause, shall be amended and certified according to such original process, pleading, or proceeding.

(*jj*) Boisse vs. Langham, 1 Missouri Rep., 572. In petition in debt, on a promissory note, the note offered in evidence varied from the one recited in the petition, by the omission of the word "pay," the circuit court will not err in permitting an amendment to be made on the trial; Atwood vs. Gillespie, 4 Missouri Rep., 423. In petition in debt by the payee of a note to the use of the assignee, the plaintiff cannot amend by striking out the endorsements, with a view of showing himself the legal owner of the note, as the form of the action declares he is not the legal owner of the note; Langham vs. Lebarge, 6 Missouri Rep., 355. It is not necessary for the supreme court to determine the proper manner in which the circuit courts should allow amendments to be made; Riggin vs Collier & Pettus, 6 Missouri Rep., 568. The power of amendment is left somewhat to the discretion of the circuit court, and this discretionary power will not be controlled by the supreme court, unless some good will result therefrom; Calloway vs. Munn, 7 Missouri Rep., 567. Amendments are not allowed, as a matter of course, by the statute, but are only permitted, in the discretion of the court, in furtherance of justice; Caldwell vs. M'Kee, 8 Missouri Rep., 334.

(*kk*) Hanley vs. Dewes, 1 Missouri Rep., 16; Hickman vs. Barnes, 1 Missouri Rep., 156; Ashby vs. Glasgow et al., 7 Missouri Rep., 320.

Returns by officers or any court may be amended, how and by whom, as well before as after judgment.

SEC. 5. All returns made by any sheriff, or other officer, or by any court or subordinate tribunal, to any court, may be amended in matter of form, by the court to which such return shall be made, in their discretion, as well before as after judgment.

Imperfections or defects in award of *venire* may be amended or supplied.

SEC. 6. Any imperfection or defect in the award of any venire, or any omission to award such venire on the record, may be amended or supplied by the court in which such record is.

Imperfections enumerated, for which certain judgments shall not be stayed or reversed.

SEC. 7. When a verdict shall have been rendered in any cause, the judgment thereon shall not be stayed, nor shall the judgment upon such verdict, or any judgment upon confession, *nihil dicit*, or *non sum informatus*, nor any judgment upon a writ of inquiry of damages, executed thereon, be reversed, impaired, or in any way affected by reason of the following imperfections, omissions, defects, matters, or things, or any of them, in the pleadings, process, proceedings or record, namely: *First*, for want of any writ, original or judicial; *second*, for any default, or defect of process, or for misconceiving any process, or awarding the same to a wrong officer, or for the want of any suggestion for awarding process, or for any insufficient suggestion; *third*, for any imperfect or insufficient return of any sheriff, or other officer, or that the name of such officer is not set to any return actually made by him; (*ll*) *fourth*, for any variance between the original writ, plaint or declaration, or either of them; (**) *fifth*, for any mispleading, miscontinuance, or discontinuance, insufficient pleading, *jeofail*, or misjoining of issue; *sixth*, for want of any warrant of attorney by either party, except in cases of judgment by confession, when such warrant is expressly required by law; *seventh*, for any party under twenty-one years of age, having appearance by attorney, if the verdict or judgment be for him; *eighth*, for the want of any allegation or averment, on account of which omission a special demurrer could have been maintained; *ninth*, for omitting any allegation or averment, without proving which the triers of the issue ought not to have given such a verdict; (*lll*) *tenth*, for any mistake in the name of any party or person, or in any sum of money, or in any description of any property, or in reciting or stating any day, month or year, when the correct name, term, sum or description shall have been once rightly alleged in any of the pleadings or proceedings; (*mm*) *eleventh*, for a mistake in the name of any juror or officer; *twelfth*, for the want of any right venue, if the cause was tried by a jury of the proper county;

(*ll*) *Vide* Muldrow vs. Bates, 5 Missouri Rep., 214, and sections 8 and 9 of this article.

(**) Yates vs. Kimmel & Taylor, 5 Missouri Rep., 87.

thirteenth, for any informality in entering a judgment, or making up the record thereof, or in any continuance or other entry upon the record; (*nn*) *fourteenth*, for any other default or negligence of any clerk or officer of the court, or of the parties, or of their counsellors or attorneys, by which neither party shall have been prejudiced.

The omissions, defects, &c., in preceding section, may be supplied or amended, when.

SEC. 8. The omissions, imperfections, defects and variances, in the preceding section enumerated, and all others of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties on the trial, shall be supplied and amended by the court where the judgment shall be given, or by the court into which such judgment shall be removed by writ of error or appeal. (*pp*)

Process, pleading, or record, not to be amended without the order of the court.

SEC. 9. No process, pleading or record shall be amended or impaired by the clerk or other officer of the court, or by any person, without the order of such court, or of some court of competent authority.

To what actions, writs, &c., this article shall extend; shall not extend to indictments or informations.

SEC. 10. The provisions of this article shall extend to all actions in courts of law, and to all suits for the recovery of any debt due to this territory, or for any debt, duty or revenue belonging to this territory; and, also, to all actions for penalties, to all writs of mandamus and prohibition, to informations in the nature of a *quo warranto*, to writs of *scire facias*, and to the proceedings thereon; but shall not extend to indictments or information for any criminal matter, or to the proceedings thereon. (*qq*)

ARTICLE VII.

Of new trials, arrest of judgment, final judgment, and miscellaneous provisions.

§ 1. Motions for new trials and in arrest, when to be made.
2. Written specification to accompany motion.
3. Only one new trial allowed to either party; exceptions.
4. Costs of new trials, by whom paid.
§ 5. After arrest of judgment, proceedings may be amended.
6 Costs to be paid by the one who made the first error.
7. Verdict for entire damages on several counts, good, &c.
8. Limitation of motion to set aside verdict.

(*ll*) Helm vs. Wilson, 4 Missouri Rep., 481; Yates vs. Kimmel & Taylor, 5 Missouri Rep., 87.

(*mm*) Where a judgment is given, by mistake, for a sum greater than the demand, and the sum is rightly stated in any of the pleadings, the supreme court will not, on that account, reverse it, but will allow the plaintiff, on his application, to enter a *remittitur* as to the excess; Atwood vs. Gillespie, 4 Missouri Rep., 423.

(*nn*) *Vide* note (*kk*) ante.

(*pp*) See Muldrow vs. Bates, 5 Missouri Rep., 214.

(*qq*) If the court below fail to find a material issue, such error is not cured by the statute; Pratt vs. Rogers, 5 Missouri Rep., 51.

§ 9. Limitation of *scire facias* to revive judgment rendered at the time of taking effect of this act.

10. Limitation of such writ to revive judgments rendered after the taking effect of this act.

11. Persons may appeal to supreme court, when.

12. On what conditions appeal to be allowed.

13. Court to make an order allowing an appeal; in what cases the allowance shall stay execution.

14. Clerk to make out a docket of causes before the commencement of each term of the court; contents of docket.

15. List of causes docketed to be posted up by the clerk in his office, when and how.

16. Clerk to issue subpoenas for witnesses.

17. Penalty for failing to make out docket, to set up list of causes, or to issue subpoenas.

18 Plaintiff may dismiss his suit in vacation by paying costs.

19. In actions founded on written contracts, want or failure of consideration may be pleaded.

20. Want or failure of consideration may be proven in whole or in part.

21. If such written contracts be given in evidence without being specially pleaded, the other party may prove the want or failure of consideration.

§ 22. Nothing in three last sections to affect a *bona fide* endorsee.

23. Counts in case founded in tort, may be joined with counts in trespass.

24. Form of plea of general issue.

25. Whatever heretofore might have been given in evidence under general issue, either in case of trespass, may be given under the above form.

26. Interested witness made competent, how and under what circumstances.

27. If judgment sought to be obtained be admissible in evidence in favor of such witness, the same to be endorsed on declaration to prevent him from being profited thereby.

28. In what case jury to give damages by way of interest.

29. Statement of the name of the county in margin of declaration, sufficient.

30. Not when local description is necessary.

31. The terms "*actionem non*" and "*precludi non*," not necessary.

32. Preceding section not to extend to cases where estoppel is pleaded.

33. Form of commencement of plea.

34. Not necessary to state that pleading is by leave of court.

35. No protestation necessary in pleading.

36. Form of demurrer.

37. Form of joinder in demurrer.

Motions for new trials and in arrests, when to be made.

SECTION 1. All motions for new trials (*rr*) and in arrest of judgment, (*ss*) shall be made within four days (*tt*) after the

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(*rr*) M'Knight & Brady vs. Wells, 1 Missouri Rep., 13; Hanley vs. Blanton, *ib.*, 49; M'Lane vs. Harris, *ib.*, 700; Valois vs. Warner, *ib.*, 730; Montgomery vs. Blair, 2 Missouri Rep., 189; Hays vs. Thomas, 3 Missouri Rep., 335; Johnson vs. Strader & Thompson, *ib.*, 359; Price vs. Cannon, *ib.*, 453; Singleton vs. Mann, *ib.*, 464; Clemens vs. Laveille & Morton, 4 Missouri Rep., 80; Hill vs. Wilkins, *ib.*, 86; Oldham vs. Henderson, *ib.*, 295; Meechum vs. Judy Logan, *ib.*, 361; Elliott vs. Leake, *ib.*, 540; Polk vs. The State, *ib.*, 544; Martin vs. Withington, *ib.*, 518; Martin vs. Hays, 5 Missouri Rep., 62; Pratt vs. Blakey, *ib.*, 205; Mulliken vs. Greer, *ib.*, 489; Steel vs. M'Cutcheon, *ib.*, 522; Vaughn vs. Montgomery, *ib.*, 529; Thompson et al., vs. Child, garnishee, 6 Missouri Rep., 162; Campbell & Maison vs. Hood, *ib.*, 211; Stout vs. Calver, *ib.*, 254; Dooly & Kirkland vs. Jennings, *ib.*, 61; Smiths vs Matthews, *ib.*, 600; Hite vs. Lenhart, et al., 7 Missouri Rep., 22; Lackey vs. Lane and M'Cabe, *ib.*, 220; Benoist & Hackney vs. Powell & Wilson, *ib.*, 224; Rennick vs. Walton, *ib.*, 292; Ferguson vs. Turner, *ib.*, 497; and see Davis vs. Davis, 8 Missouri Rep., 56.

(*ss*) Davidson vs. Peck, 4 Missouri Rep., 438; Griffin & Kinote vs. Samuels, 6 Missouri Rep., 50.

(*tt*) A motion for a new trial cannot be entertained after the lapse of four days from the trial; but the court, upon the suggestion of counsel, or otherwise, has the power to grant a new trial, even after the expiration of that time, for reasons appearing to the court; the sufficiency of which reasons may, however, be brought up by writ of error; Edwards, J., in Williams vs. Circuit Court of St. Louis county, 5 Missouri Rep., 246; Tompkins, J., dissenting. M'Girk, J., in same case, held, where the motion was made within the four days, the court might allow the reasons to be filed after the expiration of four days; but if neither the motion, nor the reasons for the motion, be filed within the four days, the power of the court over the subject ceases. A refusal to grant a new trial on motion made more than four days after the trial, is not error; Allen & Dougherty vs. Brown, 5 Missouri Rep., 383.

trial, if the term shall continue so long, and if not, then before the end of the term.

Specification to accompany motion.

SEC. 2. Every such motion shall be accompanied by a written specification of the reasons (*uu*) upon which it is founded.

Only one new trial allowed to each party. Exceptions.

SEC. 3. Only one new trial shall be allowed to either party, except, *first*, where the triers of the fact shall have erred in a matter of law; (*vv*) *second*, when the jury shall be guilty of misbehavior. (*ww*)

Costs of new trials, by whom paid.

SEC. 4. The costs of all new trials shall either abide the event of the suit, or be paid by the party to whom such new trial is granted, according to the order of the court, to be made at the time of granting such new trial.

After arrest of judgment, proceedings may be amended.

SEC. 5. When a judgment shall be arrested, the court shall allow the proceeding in which the error was to be amended, in all cases when the same amendment might have been made before trial, (*xx*) and the cause shall again be proceeded in according to the practice of the court.

Costs paid by one who made the first error.

SEC. 6. In such case, the party in whose proceeding the first error was shall pay the costs incurred thereby.

Verdict for entire damages on several counts, good.

SEC. 7. When there are several counts in a declaration, and entire damages are given, the verdict shall be good, notwithstanding one or more of such counts shall be defective.

Limitation of motion to set aside verdict.

SEC. 8. Judgments, in any court of record, shall not be set aside for irregularity, on motion, unless such motion be made within five years after the term such judgment was rendered.

Limitation of *scire facias* to revive.

SEC. 9. Writs of *scire facias*, to revive any judgment or recovery which may have been rendered at the time this act takes effect, must be brought within ten years thereafter.

Limitation of such writs to judgments hereafter.

SEC. 10. Such writs, when brought to revive any judgment or recovery rendered after the time this act takes effect, shall be brought within ten years thereafter.

Persons may appeal to supreme court.

SEC. 11. Every person aggrieved by any final judgment or decision of any court of record, in any civil case, may make his appeal to the supreme court.

(*uu*) Chamberlain vs. Smith's administrators, 1 Missouri Rep., 718.

(*vv*) For errors of the jury in matters of law, but not for the error of the court, a second new trial may be granted; Hill vs. Wilkins, 4 Missouri Rep., 86. The error of law alluded to, on a motion for a second new trial, must be a misconception of the instructions of the court, or of the general law governing the case, (when no instructions have been given,) or an entire disregard of such instructions, which must be inferred from a comparison of the verdict with the facts in evidence. But when there is conflicting testimony submitted to a jury, and the facts found are supported by the testimony, there is no ground for supposing a misapprehension or perversion of the law, and, consequently, no ground for a second new trial; Hill vs. Deaver, 7 Missouri Rep., 57; *vide* Humbert vs. Eckert, *ib.*, 259.

(*ww*) Stewart vs. Small, 5 Missouri Rep., 525.

(*xx*) See sections 1, 7, 8 and 9, of the sixth article of this act, ante.

On what conditions appeal to be allowed.

Sec. 12. No such appeal shall be allowed, unless, *first*, it be made during the term at which the judgment or decision appealed from was given; and, *second*, the appellant or his agent shall, during the same term, file in the court his affidavit, stating that such appeal is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

Court to make an order allowing an appeal.

In what cases the allowance shall stay execution.

Sec. 13. Upon the appeal being made, the court shall make an order allowing the appeal; and such allowance thereof shall stay the execution in the following cases, and no other: *First*, when the appellant shall be an executor or administrator, and the action by or against him as such; *second*, when the appellant, or some responsible person for him, together with two sufficient sureties, to be approved by the court, shall, during the term at which the judgment appealed from was rendered, enter into a recognizance to the adverse party in a penalty sufficient to secure whatever of debt, damages and costs have been recovered by such judgment, together with the interest that may grow due thereon, and the costs and damages that may be recovered in the supreme court upon the appeal, conditioned that the appellant will prosecute his appeal with due diligence to a decision in the supreme court; and that if the judgment appealed from is affirmed, or his appeal dismissed, he will pay whatever of debt, damages and costs have been recovered against him by the judgment of the court below, together with the interest that shall grow due thereon; or that he will otherwise perform the judgment of said court, and that he will also pay the costs and damages that may be adjudged against him in the supreme court upon his appeal.

Clerk to make out a docket of causes before the commencement of each term of the court; contents of docket.

Sec. 14. Every clerk of a court of record shall, before the commencement of each term of such court, make out a docket of all causes in which an issue of fact is to be tried, and inquiry of damages to be made, a special verdict, agreed case, demurrer, or other matter of law, to be argued at such term, and shall arrange such causes upon the docket in the same order in which they stand in the course of proceeding, setting a proper proportion for each day.

List of causes docketed to be posted up by the clerk in his office, when and how.

Sec. 15. Every clerk shall put up in some convenient place in his office, at least twelve days before the commencement of each term, a list of all the causes specified in the preceding section, distinguishing therein the day on which each cause is to be tried, and shall keep such list, so affixed, until the end of such term, for the inspection of parties and their attorneys.

Clerk to issue *subpœnas* for witnesses.

Sec. 16. Every such clerk, upon the demand of any party, or his attorney, and upon the payment of the legal fee therefor, shall issue subpœnas for witnesses, returnable upon the day the cause in which the subpœnas are demanded is set for trial.

Penalty for failing to make out docket, set up list of causes, or issue subpœnas

Sec. 17. Every clerk who shall neglect or refuse to make out such docket, or to set and keep up such list of causes, or to issue such subpœnas, according to the provisions of this act, shall be fined by the court any sum not exceeding one hundred dollars for every such offence.

Plaintiff may dismiss his suit in vacation by paying costs

Sec. 18. The plaintiff in any suit at law, in any court of record, may dismiss such suit, in the vacation of the court, upon the payment of all costs that may have accrued therein.

In actions founded on written contracts, want or failure of consideration may be pleaded.

Sec. 19. In any action founded upon any specialty or other written contract, for the payment of money or the delivery of property, the defendant, by special plea or by notice attached to and filed with the plea of the general issue, may allege the want or failure of the consideration in the whole, or any part thereof, of such specialty or other written contract.

Want or failure, &c., may be proven, &c.

Sec. 20. If any specialty or other written contract, for the payment of money or the delivery of property, is alleged by either party in any other stage of the proceedings, the other party may aver in answer, and prove on the trial, the want or failure, in the whole or in part, of the consideration of such specialty or other written contract.

If such specialty be given in evidence when not pleaded, other party may prove want of consideration.

Sec. 21. Whenever such specialty or other written contract, for the payment of money or the delivery of property, shall be given in evidence in any court by either party, without being pleaded, the other party may prove the want or failure of the consideration, in the whole or in part, of such specialty or other written contract.

Nothing in the three last sections to effect any *bona fide* endorsee

Sec. 22. Nothing contained in the three next preceding sections shall affect or impair the right of any *bona fide* endorsee of any contract in writing, made negotiable by the law of this territory, when such instrument shall be negotiated before it becomes due.

Counts in case founded in tort, may be joined with counts in trespass.

Sec. 23. One or more counts in trespass on the case, founded in tort, may be joined with one or more counts in trespass in the same declaration, when all of such counts are for the same cause of action.

Form of the plea of general issue.

Sec. 24. The general issue to such declaration may be in the following form: "C. D., ats. E. F., and the said defendant, by A. B., his attorney, (or in person,) says he is not guilty of the said supposed trespasses and grievances above laid to his charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this he puts himself upon the country."

What may be given in evidence in case and trespass under the general issue.

SEC. 25. Whatever might have been given in evidence, before the taking effect of the two preceding sections, under the general issue in trespass, may be given in evidence under such general issue to the counts in trespass; and whatever might have been given in evidence under the general issue in case, may be given in evidence under such general issue to the counts in case.

Interested witness made competent, how, and under what circumstances.

SEC. 26. If any witness shall be objected to as incompetent, on the ground that the verdict or judgment, in the action on which it shall be proposed to examine him, would be admissible in evidence for or against him, such witness shall, nevertheless, be examined; but in that case, a verdict or judgment in that action, in favor of the party on whose behalf he shall have been examined, shall not be admissible in evidence for him, or any one claiming under him, nor shall a verdict or judgment against the party on whose behalf he shall have been examined be admissible in evidence against him, or any one claiming under him.

The name of witness objected to as incompetent, &c., in what case to be endorsed on the declaration.

SEC. 27. The name of every witness objected to as incompetent, on the ground that such verdict or judgment would be admissible in evidence for or against him, shall, at the trial, be endorsed on the declaration or document on which the trial shall be had, together with the name of the party on whose behalf he was examined, by the clerk of the court, at the request of either party;

Effect of such endorsement.

and a copy of such endorsement, certified by the clerk, under the seal of the court, shall be sufficient evidence that such witness was examined, in any subsequent proceeding in which the verdict or judgment shall be offered in evidence.

In what case jury to give damages by way of interest.

SEC. 28. The jury, on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass, *de bonis asportatis.*

Statement of the name of county in the margin sufficient in all cases.

SEC. 29. The name of the county may, in all cases, be stated in the margin of a declaration, and shall be taken to be the venue intended by the plaintiff; and it shall not be necessary to state a venue in the body of the declaration, or in any subsequent pleading.

Not when local description is necessary.

SEC. 30. *Provided,* that in cases where local description is now required, such local description shall be given.

The terms *"actionem non,"* and *"precludi non,"* not necessary.

SEC. 31. In a plea, or subsequent pleading, intended to be pleaded in bar of the whole action generally, it shall not be necessary to use any allegation of *actionem non,* or to the like effect, or any prayer of judgment; nor shall it be necessary in replication, or subsequent pleading, intended to be pleaded in maintenance of the whole action, to use any allegation of *precludi non,* or to the like effect, or any prayer of judgment; and all pleas, replications and subsequent pleadings, pleaded without such formal parts, shall be taken, unless otherwise expressed, as pleaded respectively in bar of the whole action, or in the maintenance of the whole action.

Not to extend to *estoppels.*

SEC. 32. Nothing contained in the preceding section shall extend to cases where an estoppel is pleaded.

Form of commencement of plea.

SEC. 33. No formal defence shall be required in a plea, and it may commence as follows: "The said defendant, by ——, attorney (or in person, &c.) says that ——"

Not necessary to state that pleading is by leave of court.

SEC. 34. It shall not be necessary to state in a second or other plea that it is pleaded by leave of the court, or according to the form of the statute, or to that effect.

No protestation necessary in pleading.

SEC. 35. No protestation shall hereafter be made in any pleading, but either party shall be entitled to the same advantage in that or other actions as if a protestation had been made.

Form of a demurrer.

SEC. 36. The form of a demurrer may be as follows: "The said defendant (or plaintiff, as the case may be), by ——, his attorney, (or in person, &c.) says that the declaration (or plea, &c.) is not sufficient in law."

Form of joinder in demurrer.

SEC. 37. The form of a joinder in demurrer may be as follows: "The said plaintiff (or defendant) says that the declaration (or plea, &c.) is sufficient in law."

This act to take effect and be in force from and after its passage.

CHAPTER 128.

PRACTICE IN CHANCERY.

An act regulating the practice of courts in chancery.

ARTICLE I. Of the commencement of suits, the service and return of process.
II. Of the pleadings and exhibits, and proceedings thereon.
III. Of the issues, trials, and the incidents thereto.
IV. Of the commissioner; his duty; report and proceedings thereon,
V. Of the abatement of suits by death, marriage or otherwise, and the revival thereof.
VI. Of the decree and subsequent proceedings thereon.

ARTICLE I.

Of the commencement of suits, the service and return of process.

§ 1. Jurisdiction of courts of chancery; their powers.
2. In what county suits concerning or affecting real estate shall be brought.
3. In other cases, suits snall be brought where defendant resides.
4. If defendants are non-residents, where suit may be brought.
5. Commencement of suit must be by bill.
6. Summons to issue.
7. A separate summons shall issue, when.
8. Summons to be attached to copy of bill; how served.
9. Shall be delivered or left with defendant first served.
10. Refusal to hear, &c., or receive a copy, deemed a sufficient service.
§ 11. Affidavit of non-residence and order of publication.
12. If part of defendants are resident, how served.
13. On return of *non est*, order of publication may be made.
14. Order of publication in vacation, how made, and by whom.
15. In what manner, and how long published.
16. Several defendants, and some do not appear and are not summoned, complainant may dismiss as to them, or continue cause.
17. Complainant may cause a copy of bil to be delivered to non-resident defendant.
18. Such copy may be served by any competent witness.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Jurisdiction of courts of chancery; their powers.

Section 1. In all cases where adequate relief cannot be had in the ordinary course of proceeding at law, (*a*) the several courts of this territory having chancery jurisdiction shall have power to proceed therein according to the rules, usage and practice of courts of equity, and to enforce their decrees by execution, or in any other manner proper for a court of chancery. (*b*)

(*a*) *Vide* Clamorgan *et al.* vs. Guisse *et al.*, 1 Missouri Rep., 141; Campbell vs. Edwards, *ib.*, 324; Head vs. Pitzer, *ib.*, 548; Cadwaleder vs. Atchison, *ib.*, 659; Sumner vs. Whitley, *ib.*, 708; Collier vs. Easton & Russel, 2 Missouri Rep., 145; Risher vs. Roush, *ib.*, 95; Bartlett vs. Pettus *et al.*, 3 *ib.*, 345.

(*b*) Clamorgan *et al.* vs. Guisse *et al.*, 1 Missouri Rep., 141; Campbell vs. Edwards, *ib.*, 324; Rector vs. Price, *ib.*, 373; Byrd *et al.* vs. Ward and Cravens, *ib.*, 398; Ramsey vs. Ellis. *ib.*, 402; Berry and Smith vs. Bruckhartt, *ib.*, 418; Evans and Ellis vs. Menefee, *ib.*, 442; Peay vs. Sublet and wife, *ib.*, 449; Strong vs. Hopkins, *ib.*, 530; Head vs. Pitzer. *ib.*, 548; Cadwaleder vs. Atchison, *ib.*, 659; Bird vs. Bolduc *et al.*, *ib.*, 701; Risher vs. Roush, *ib.*, 702; Sumner vs. Whitley, *ib.*, 708; Risher vs. Roush, 2 Missouri Rep., 95; McKnight and Brady vs. Bright, *ib.*, 110; Bean *et al.* vs. Valle *et al.*, *ib.*, 126; Collier vs. Easton and Russel, *ib.*, 145. Davis vs. Clay, *ib.*, 161; Labarge vs. Chauvin, *ib.*, 179; West vs. Wayne, 3 Missouri Rep., 16; Bartlett vs. Pettis and Glendy, *ib.*, 345; Yantis vs. Burdett, *ib.*, 457; Buford vs. Caldwell, *ib.*, 477; Mullanphy vs. Simpson, and Russel vs. Mullanphy, *ib.*, 492; Perry vs. Craig, *ib.*, 516; Smith vs. D'Lashmutt, 4 Missouri Rep., 103; Burk *et al.* vs. Flournoy *et al.*, *ib.* 116; Jackson vs. Jackson *et al.*, *ib*, 210; Marsh vs. Turner and Lisle, *ib.*, 253; Baker vs. Welsh, *ib.*, 484; Banks and wife vs. McCarty, *et al.*, 5 Missouri Rep., 1; Miller *et al.*, vs. Wells, *ib.* 6; Davis vs. Davis, *ib.*, 183; Irwin vs. Henry, *ib.*, 469; Gallaher and McCabe vs. Hunter, *ib.*, 507; Tombs vs. Tucker, 6 Missouri Rep., 16; Bryan vs. Jamison, 7 Missouri Rep., 106; Shields and Hickerson vs. Bogliolo, *ib.*, 134; Welton and Edwards vs. Martin, *ib.*, 307; Rector vs. Hutchison *et al.*, *ib.* 522; Barton vs. Rector *et al.*, *ib.*, 524; Stephenson vs. Smith, *ib.*, 610. A court of equity has no power to decree a partition of personal chattels between joint tenants or tenants in common; Gudgel and Austin vs. Mead *et al*, 8 Missouri Rep., 53.

In what county suits concerning real estate shall be brought.

Sec. 2. Suits in equity concerning real estate, or whereby the same may be affected, shall be brought in the county or judicial district within which such real estate, or a greater part thereof, is situate.

In other cases suit to be brought where defendant resides.

Sec. 3. In other cases, such suits shall be brought in the county within which the defendants, or a majority of them, if inbitants of the territory, reside.

If non-residents, where suit brought.

Sec. 4. If all the defendants are non-residents, such suits may be brought in any county.

Commencement of suit must be by bill.

Sec. 5. Every person commencing a suit in equity shall file in the office of the clerk of the proper court a bill setting forth the nature of his complaint.

Summons to issue.

Sec. 6. The clerk shall thereupon issue a summons returnable to the next term, and directed to the sheriff of the county in which the defendants reside, requiring him to summon the defendants to appear and answer to the bill on the return day thereof.

Separate summons shall issue, when.

Sec. 7. Where there are several defendants residing in different counties, a separate summons shall be issued to each county, including all the defendants residing therein.

Summons to be attached to copy of bill; how served.

Sec. 8. Every summons shall be accompanied by a separate copy of the bill, and the service shall be either, *first*, by reading the bill and writ to the defendant; or, *second*, by delivering to the defendant, who shall be first summoned, a copy of the writ and bill, and to such as shall be subsequently summoned a copy of the writ; or, *third*, by leaving such copy at the usual place of abode of the defendant, with some white person of the family above the age of fifteen years.

Shall be delivered to, or left with defendant first served.

Sec. 9. The copy of the bill accompanying the writ shall be delivered to or left at the place of abode of the defendant who shall be first summoned.

Refusal to hear, &c., or receive a copy, deemed a sufficient service.

Sec. 10. In all cases where the defendant shall refuse to hear such bill or writ read, or to receive a copy thereof, the offer of the officer to read the same, or to deliver a copy thereof, and such refusal, shall be sufficient service of such writ.

Affidavit of non-residence; order of publication.

Sec. 11. If any complainant, or any person for him, shall file with his bill an affidavit, stating that part or all of the defendants are non-residents of the territory, the court, or clerk in vacation, shall make an order directed to the non-residents, notifying them of the commencement of the suit, and stating, briefly, the object and general nature of the bill, and requiring them to appear on a day to be therein named, allowing sufficient time for publication, to appear and answer the bill, or that the bill will be taken as confessed.

If part of def'ts are residents, process, how served.

SEC. 12. If, in such case, part of the defendants are residents of the territory, process shall be issued against them as in other cases.

On return of *non est*, order of publication may be made.

SEC. 13. When a summons shall be issued against any defendant, and the sheriff to whom it is directed shall make return that the defendant cannot be found, the court, being first satisfied that process cannot be served, shall make an order, as is required in the preceding section, in case of non-resident defendants.

Order of publication in vacation, how made and by whom.

SEC. 14. If any complainant shall allege in his bill that there are, or that he verily believes there are, persons interested in the subject matter of the bill whose names he cannot insert therein because they are unknown to him, and shall describe the interest of such persons and how derived, so far as his knowledge extends; and shall verify such allegations by affidavit to his bill annexed, the court or the judge, or the clerk thereof in vacation, shall make an order as in case of non-residents, reciting, moreover, all allegations in relation to the interest of such unknown parties.

In what manner, and how long published.

SEC. 15. Every order against non-resident, absent or unknown defendants shall be published in some newspaper printed in this territory for eight weeks successively, the last insertion to be at least four weeks before the commencement of the term at which the defendants are required to appear.

Several defendants, and some do not appear and are not summoned, complainant may dismiss as to them or continue cause.

SEC. 16. When there are several defendants, some of whom do not appear, and are neither notified nor summoned, the complainant may proceed against those, if any, who do appear, or are summoned or notified, and dismiss his bill as to the others, or he may continue the cause, and proceed to bring in the other defendants by process or publication, as the case may require. (c)

Complainant may cause a copy of bill to be delivered to non-resident defendant.

SEC. 17. The complainant may cause a copy of the bill, with a notice of the suit, to be delivered to any known defendant residing or being without this territory, at any place within the United States or their territories, two months before the commencement of the term at which such defendant is required to appear.

Such copy may be delivered by any competent witness.

SEC. 18. Such service may be made by any free white person above the age of twenty-one years who is a competent witness in the cause, and, being proved by the affidavit or deposition of such person, shall be as effectual as the service of a copy of the bill and summons within this territory.

(c) Evans & Ellis vs. Menefee, 1 Missouri Rep., 442; Hunter vs. Gallagher *et al.*, 4 Missouri Rep., 364.

ARTICLE II.

Of the pleadings and exhibits, and the proceedings thereon.

§ 1. Defendant shall file his exceptions, demur or answer, in the first six days.
2. Failing, interlocutory decree as confessed may be taken.
3. Defendant may appear and have decree set aside, when.
4. Exceptions to a bill to be determined, when.
5. Proceedings, if exceptions are allowed; complainant shall pay costs.
6. Defendant shall pay costs, when.
7. Under what restrictions defendant may plead several pleas.
8. Complainant shall pay costs, when.
9. Defendant to pay costs when plea found against him.
10. The part of the bill unanswered (if no plea filed) shall be taken as confessed.
11. Demurrer sustained, complainant to pay costs.
12. Demurrer overruled, defendant to plead instanter and pay costs.
13. Full answer must be made to the bill, except, &c.
14. Defendant may exhibit interrogatories.
15. Answer of complainant to be evidence.
16. In default of such answer, bill to be dismissed.
17. Who may take affidavits to verify bill or answer.
18. Exceptions to answer to be made within four days.
19. Costs on exceptions, by whom paid.
20. If answer adjudged insufficient, proceedings.
§ 21. Second answer insufficient, proceedings.
22. Third answer insufficient, proceedings.
23. Bill not to be dismissed after cross-bill filed.
24. Cross-bill not to be answered until sufficient answer be filed to original bill.
25. Pleas and demurrers, when disposed of.
26. Replications to be general, when to be filed.
27. Cause deemed at issue, when.
28. Cause set for hearing on bill and answer, when.
29. In such case answer taken as true.
30. When discovery is sought, answer not to be conclusive evidence.
31. If party rely on deed, record, &c., substance thereof to be stated in pleading and filed as exhibits.
32. If deed or writing cannot be produced, fact must be stated in pleadings, &c.
33. Power of court to compel the production of books, papers, &c.
34. If such books be not produced, allegations relating thereto taken as confessed.
35. All pleadings to be signed and filed.
36. Court may extend time of pleading.
37. May grant leave to amend, if no surprise given to the other party.
38. Exhibits to be carefully marked and filed.
39. Original instruments filed, after hearing may be withdrawn by leaving copies.

Defendant shall file his exceptions, demur or answer, in the first six days

Section 1. Every defendant who shall be summoned or notified, according to the provisions of this act, shall file his exceptions, plead, demur, or answer to the bill, within the first six days of the term at which he is required to appear, if the term shall so long continue, and if not, then before the end of the term, unless further time be given by the court. (*d*)

Failing, interlocutory decree as confessed may be taken.

Sec. 2. If any such defendant fail to do as required by the preceding section, the bill may be taken as confessed, and an interlocutory decree entered, which may be made absolute at the next term, and carried into effect as other decrees. (*e*)

(*d*) Wilkson vs. Blackwell, 4 Missouri Rep., 428; Lyne vs. Guardian *et al.*, 1 Missouri Rep., 410; Easton & Russell vs. Colier, 3 Missouri Rep., 379.

(*e*) Evans vs. the State, 1 Missouri Rep., 492; Divers vs. Mark *et al.*, 3 Missouri Rep., 81.

Defendant may appear and have decree set aside, when.

Sec. 3. No exceptions or plea shall be filed after an interlocutory decree; but if the defendant appear within the first six days of the term next after such decree is entered, and show good cause for not before appearing, the decree may be set aside, and the defendant allowed to file his answer or demurrer to the bill.

Exceptions to be determined, when.

Sec. 4. Exceptions to a bill, when filed, shall be argued and determined without delay.

Proceedings if exceptions are allowed.

Sec. 5. If any such exceptions are allowed, the complainant shall pay costs, and the defendant shall plead, demur or answer to the residue of the bill.

Defendant to pay costs, when.

Sec. 6. If all such exceptions are overruled, the defendant shall pay the costs, and plead, demur, or answer to the whole bill immediately.

Under what restrictions defendant may plead several pleas.

Sec. 7. Defendants may plead as many several matters to a bill, or any part thereof, as they shall think proper, so that they do not plead and demur, or plead and answer to the same part of a bill; except, that where by the rules and practice in chancery an answer is necessary to support a plea, such answer may be filed with the plea.

Complainant shall pay costs, when.

Sec. 8. If a plea be found for the defendant, or plea be allowed, the complainant shall pay costs.

Defendant shall pay costs, when.

Sec. 9. If the matter of a plea be found against the defendant, or the plea be overruled, the defendant shall pay costs.

Part unanswered may be taken as confessed, when.

Sec. 10. In such case no other plea shall be filed, and the defendant shall answer the bill, or in default thereof the part unanswered shall be taken as confessed.

Demurrer sustained, complainant to pay costs.

Sec. 11. Demurrers shall be considered and determined without delay, and if sustained, in whole or in part, the complainant shall pay costs.

Demurrer overruled, defendant to plead instanter and pay costs.

Sec. 12. If they are overruled, the defendant shall pay costs and shall file his answer instanter, or, in default thereof, so much of the bill as remains unanswered shall be taken as confessed.

Full answer must be made to the bill, exceptions, &c.

Sec. 13. Every defendant shall answer fully all allegations and interrogatories of the complainant, except such as are not required to be answered by reason of exceptions, plea or demurrer thereto allowed, and the answer shall be verified by oath or affirmation.

Defendant may exhibit interrogatories.

Sec. 14. Any defendant, after filing his answer, may exhibit interrogatories to the complainant, which shall be answered by him specially, on oath or affirmation, unless excepted to, and the exceptions allowed.

Answer of complainant to be evidence.

Sec. 15. The answer of the complainant shall be evidence in the cause in the same manner as the defendant's answer.

In default of such answer, bill to be dismissed.

Sec. 16. In default of the complainant's answering such interrogatories, the bill may be dismissed.

Sec. 17. Affidavits, when required to verify a bill or answer, may be taken before and certified by the clerk of the court in which the suit is pending, or some judge or justice of the peace, the official character of such officer (if not of this territory) being attested by the seal of the state, territory, kingdom or empire of which he is an officer, or the seal of some court of record within the same.

Who may take affidavits to verify bill or answer.

Sec. 18. Exceptions to answers and interrogatories of the defendant may be filed within four days after the filing the answer or the interrogatories, and not thereafter; and, when filed, shall be considered and determined without delay.

Exceptions to answer to be made within four days.

Sec. 19. If such exceptions are overruled, the complainant shall pay the costs; if allowed, the defendant shall pay the costs.

Costs on exceptions, by whom paid

Sec. 20. When an answer shall be adjudged insufficient, the defendant shall file a further answer within such time as the court shall direct, and in default thereof the bill shall be taken as confessed.

Answer insufficient, proceedings.

Sec. 21. If such second answer be filed and adjudged insufficient, the defendant shall pay double costs and answer fully instanter, or in default thereof the bill shall be taken as confessed.

Second answer insufficient, proceedings.

Sec. 22. If a third answer be filed and adjudged insufficient, the defendant shall pay treble costs, and no further answer shall be filed, but the bill shall be taken as confessed.

Third answer insufficient, proceedings.

Sec. 23. No complainant shall be allowed to dismiss his bill, after a cross-bill filed, without the consent of the defendant.

Bill not to be dismissed after cross bill filed.

Sec. 24. The complainant shall not be compelled to file his answer to any cross-bill or interrogatories exhibited by the defendant, until the defendant shall have filed a sufficient answer to the complainant's bill.

Cross-bill not to be answered, till sufficient answer to original bill.

Sec. 25. All pleas and demurrers shall be disposed of before proceeding on the defendant's answer.

Pleas and demurrers when disposed of.

Sec. 26. Replications shall be general, with the like advantage to all parties as if special, and shall be filed within four days after answer, or at any time before the cause is set for hearing on bill and answer.

Replications to be general, when to be filed.

Sec. 27. When a replication is filed, the cause shall be deemed at issue, and stand for hearing at the next term.

Cause deemed at issue, when.

Sec. 28. If the replication be not filed within four days after the answer, the cause may be set for hearing on bill and answer.

Cause set for hearing on bill and answer, when.

Sec. 29. In such case the answer shall be taken as true, and no evidence shall be received unless it be matter of record referred to in the answer.

In such case answer taken as true, &c.

Sec. 30. When a complainant shall seek a discovery respecting the matters charged in the bill, the disclosure made in the an-

When discovery is sought, answer not to be conclusive evidence.

swer shall not be conclusive, but, if a replication be filed, may be contradicted or disproved as other testimony, according to the practice of equity.

If party rely on deed, record, &c., substance to be stated in pleading and filed as exhibits.

Sec. 31. If either party shall rely on any record, deed, or other writing, the substance thereof shall be stated in his bill, answer or plea in the same manner as is required in pleading at law; and he shall file with the bill, answer, or plea, as exhibits, an authenticated copy of such record, and the original deed or writing so set forth, if in his power.

If deed or writing cannot be produced, fact must be stated in pleadings, &c.

Sec. 32. If either party cannot produce a deed or writing relied on by him, he shall so state in his bill, answer or plea, together with the reasons why he cannot produce the same; and if such reason be sufficient, he may file the best evidence in his power of the contents of such deed or writing.

Power of court to compel the production of books, papers, &c.

Sec. 33. The court shall have power, upon sufficient cause shown by affidavit, due notice of the application being given, to require the parties, or either of them, to produce books, deeds or writings, in their power, which are alleged to contain evidence pertinent to the matter in controversy.

If such books, &c., be not produced, allegations relating thereto taken as confessed.

Sec. 34. If either party shall fail to comply with such order, and shall not satisfy the court that it is not in his power to produce the books, deeds or writings, the court may take the allegations in relation to the books, deeds and writings, not produced, as confessed, or may proceed against the party in default by attachment.

All pleadings to be signed and filed.

Sec. 35. All bills, petitions, answers, exceptions, pleas, demurrers, replications, and other pleadings, shall be signed by the party filing them, or his solicitor, and the clerk shall endorse thereon the date of the filing, and, in term, note the same on the minutes.

Court may extend time of pleading.

Sec. 36. The court may extend the time for answering, replying, pleading or demurring, upon cause shown.

May grant leave to amend if no surprise given to the other party.

Sec. 37. The court may allow parties to amend their bills, petitions, answers, pleas and replications, on the payment of costs, and on such other terms as the court may think proper, so that the other party be not surprised, or unreasonably delayed thereby. (*f*)

Exhibits to be carefully marked and filed.

Sec. 38. The parties shall carefully mark and number all papers and documents, relied on in any cause, and file the same as exhibits, and such papers and documents shall not be deemed or made a part of the pleadings or record in the cause, but may be used as evidence at the hearing, if proved or admitted.

(*f*) Wilkson vs. Blackwell, 4 Missouri Rep., 428.

Original instruments filed, may be withdrawn, when.

Sec. 39. Original deeds and other writings, relied on by either party, and filed as exhibits, shall remain on file for the inspection of the other party, until the cause is at issue or set for hearing, when they may be withdrawn, copies being substituted by the party who filed the same.

ARTICLE III.

Of the issues, trial, and the incidents thereto.

§ 1. Causes shall be tried, when.
2. Costs of continuance, by whom paid.
3. Application for a continuance, affidavit required.
4. Clerk before the commencement of each term to make out a docket of causes.
5. Shall make out a list of causes and set it up in his office.
6. Court may direct issues to be tried by jury, when.
7. No issue shall be made except as directed by the court.
8. Trial of such issues to be by jury; verdict may be general or special.
§ 9. Court may award a new trial, but not more than one new trial to any one party.
10. Witness may be examined in court, or depositions read.
11. Depositions, how taken, certified and returned.
12. Court may order substance of testimony of witness to be reduced to writing, when.
13. Rules of evidence.
14. Clerk shall issue subpœnas to take depositions.
15. Bills of exception may be allowed.

Causes shall be tried, when.

Section 1. All causes shall be tried, heard and determined at the next term after they are set for hearing, or put at issue by replication, unless good cause be shown for a continuance.

Costs of continuance, by whom paid.

Sec. 2. Every continuance granted upon the application of either party, shall be at the cost of such party, unless otherwise ordered by the court.

Application for continuance, affidavit required.

Sec. 3. Every application by a party for the continuance of a cause shall be accompanied by his affidavit, or the affidavit of some other credible person, setting forth the facts upon which the application is founded.

Clerk before commencement of each term to make out a docket of causes

Sec. 4. The clerk of each court of chancery shall, before the commencement of each term, make out a docket of all causes pending in the order in which they stand in the course of proceeding, noting, briefly, the previous steps taken in each cause, and the state of the pleadings, and shall, if necessary, set the causes for trial, hearing, or argument, on several days, assigning a due proportion to each day.

Shall make out a list of cases and set it up in his office.

Sec. 5. The clerk shall also make out a list of all causes pending at each term, specifying the day on which they are set for trial, hearing, or argument, and shall keep such list set up conspicuously in his office, for thirty days before and during the term, for the information of parties and their solicitors.

Court may direct issues to be tried by jury, when.

SEC. 6. If at any time, during the progress of a cause, it shall, in the opinion of the court, become necessary to determine any fact in controversy, by the verdict of a jury, the court may direct an issue, or issues, to be made.

No issue, except as directed by court.

SEC. 7. No issue shall be made except such as shall be directed by the court.

Trial of such issues to be by jury, &c.

SEC. 8. The trial of such issues shall be by jury, and the issues shall be disposed of by a general or special verdict, before a final decree shall be made therein. (*g*)

Court may award new trial, when.

SEC. 9. The court may award a new trial of any issue, upon good cause shown, but not more than one new trial of the same issue shall be granted to any one party.

Witnesses may be examined in court, &c.

SEC. 10. On the trial of issues, or questions of fact, in a chancery cause, the witnesses shall be examined in open court, or depositions may be read in cases in which they are authorized to be read in actions at law.

Depositions, how taken, &c.

SEC. 11. All such depositions shall be taken, certified and returned, in all respects as in actions at law. (*h*)

Court may order substance of testimony of witnesses to be reduced to writing, when.

SEC. 12. Upon the hearing of a cause by the court, the court may order the substance of the testimony of all witnesses examined in court to be reduced to writing, under its direction, by such person as the court may appoint, and the court may allow such person a reasonable compensation therefor, to be taxed as costs in the suit.

Rules of evidence.

SEC. 13. The rules of evidence shall be the same in chancery as at law.

Clerk shall issue subpœnas to take depositions.

SEC. 14. The clerk of each court of chancery shall, from time to time, issue subpœnas for witnesses, and commissions to take depositions, when required by either party.

Bills of exception may be allowed.

SEC. 15. Exceptions may be taken to the opinion of the court, during the progress of any cause, or trial of an issue, or to any decree in chancery, and bills of exception shall be allowed, signed, sealed and made a part of the record, in the same manner and with the like effect as at law. (*i*)

(*g*) Woodson & Trigg vs. McClelland, 4 Missouri Rep., 495.

(*h*) See the act concerning depositions.

(*i*) See sections 26, 27, 28, 29, 30, 31, 32, and 33, of article 4, of the act to regulate practice at law, chapter 127, ante p. 551, and Risher vs. Roush, 1 Missouri Rep., 702; Richardson, administrator, vs. Harrison, 4 Missouri Rep., 232; Swearingen vs. Newman, administrator, 4 Missouri Rep., 456.

ARTICLE IV.

Of the commissioner, his duty; report and proceedings thereon.

§ 1. Court to appoint a commissioner to audit accounts and take testimony.
2. A special commissioner may be appointed, when.
3. Commissioner shall take an oath.
4. Commissioner to appoint a time and place for proceeding, and give notice. Shall proceed *ex parte*, when.
5. May adjourn from time to time.
6. Power to administer oaths and examine witnesses.
7. Depositions may be read in evidence, when.
§ 8. Duty of commissioner in stating accounts.
9. All testimony taken before commissioner to be reduced to writing.
10. Commissioner to report speedily; what he shall report.
11. Exceptions to report to be filed, when.
12. If exceptions allowed, matter may again be referred.
13. Notices issued by commissioner, how served.
14. Notice and subpœnas may be served by competent witnesses, &c.

Court to appoint commissioner to audit accounts and take testimony.

SECTION 1. Each court of chancery may appoint a commissioner, whose duty it shall be to audit and adjust all accounts referred to him, and take testimony when thereto required, and make report thereon according to the order of the court.

A special commissioner may be appointed, when.

SEC. 2. When the commissioner is of kin to either party, or is interested in any cause, or when it may be necessary or proper, a special commissioner may be appointed.

Commissioner shall take an oath.

SEC. 3. Every commissioner, before entering upon the duties of his appointment, shall take an oath that he will faithfully and impartially perform his duties as commissioner.

Commissioner to appoint a time and place for proceeding, and give notice.

Shall proceed *ex parte*, when.

SEC. 4. When any matter shall be referred to a commissioner, or he is required to take testimony in a cause, he shall appoint a time and place for proceeding therein, and give notice thereof, in writing, to both parties or their solicitors; and if either party, being notified, shall fail to appear, he shall proceed *ex parte*.

May adjourn from time to time.

SEC. 5. The commissioner may adjourn his sittings from time to time, issue subpœnas for witnesses, and attachments to compel the attendance of such as, being summoned, fail or refuse to appear.

Power to administer oaths, &c.

SEC. 6. He shall have power to administer oaths, examine witnesses, and commit such as refuse to testify.

Depositions read in evidence, when.

SEC. 7. Depositions, regularly taken in the cause, may be read in evidence before the commissioner.

Duty of commissioner in stating accounts.

SEC. 8. When accounts are referred to him, which, together with the other testimony, being heard, he shall state the account truly, according to his opinion, and if the parties require it, also, according to the views of each of them.

All testimony to be reduced to writing.

SEC. 9. All testimony taken before a commissioner shall be reduced to writing, and if either party shall except to the competency of a witness, or the admission or exclusion of evidence, the commissioner, if required, shall state the particulars of the exceptions in his report.

Commissioner shall report, when and how.

Sec. 10. The commissioner shall, in all cases, report as speedily as possible, reciting the order of the court, and showing the notice to the parties, the time and place of stating the account, or taking the testimony, and all other proceedings had, and return the same, together with the testimony taken, to the court.

Exceptions to report to be filed, when.

Sec. 11. All exceptions to the report of the commissioner, shall be in writing, and filed within four days, in term, after the report is filed, and shall be argued without delay.

If exceptions allowed, matter may be again referred.

Sec. 12. If exceptions are allowed, the matter may again be referred, with instructions, if necessary; but if the report is affirmed, the court shall proceed thereon accordingly.

Notices issued by commissioner, how served.

Sec. 13. All notices required to be given by the commissioner or others, in the progress of a cause, shall be served by reading the same, or delivering a copy to the person to be notified, and may be served by the sheriff or other officer authorized to serve process, whose return shall be evidence of the facts therein stated.

Notices and subpœnas may be served by competent witnesses, &c.

Sec. 14. Such notices, and all subpœnas for witnesses in any cause, may also be served by any free white person, being a competent witness in the cause, and the affidavit of such person shall be received as evidence of the facts stated relating to the service.

ARTICLE V.

Of the abatement of suits by death, marriage or otherwise, and the revival thereof.

§ 1. If cause of action survive, suit in chancery not to abate by death of one or more complainants or defendants, but may proceed.

2. In case of death, if cause of action do not survive, suit only to abate as to those who are dead.

3. If all of either party die, suit not to abate, but may be revived.

4. Bill of revivor not necessary to revive against deceased defendant's representatives; but on suggestion of death and petition of complainant, *scire facias* or order of publication may be had to make them parties.

5. Manner of serving *scire facias* and making publication.

§ 6. Court may cause defendant's appearance to be entered, when.

7. Effect of answer of deceased party; if there be no answer, proceedings.

8. Court may order a bill to be taken *pro confesso*, or compel answer.

9. What petition for revival shall state, to obtain further answer from representatives.

10. A copy of petition to be annexed to summons.

11. Bill may be taken *pro confesso* against representatives, when.

12. Representatives may be made complainants, when; if necessary, may amend the bill.

13. Defendants to answer amended bill.

§ 14. Representatives failing to make themselves complainants, may be made defendants.
15. If no surviving complainant, or he fail to proceed against representatives of deceased complainant, proceedings. Order of court.
16. Bill may be dismissed if no cause of revivor be shown by representatives.
17. If defendant die, and cause of action do not survive, proceedings.
18. Proceedings of surviving defendant against representatives of co-defendants.
19. If representatives of deceased parties are not made parties by the third term, cause shall proceed between survivors.
§ 20. Suit shall be dismissed, when.
21. If a female party marry, her husband may be made a party on his application.
22. Husband may be made a party on application of any party to the suit.
23. To proceed as if originally made a party.
24. Suit not to abate by death of party acting in a fiduciary capacity.
25. His successor may be made a party.
26. This act construed to give court power to make any person interested a party.
27. No such person to be affected in any suit to which he is not a party.

Suit in chancery not to abate by death.

SECTION 1. When the cause of action shall survive, no suit in chancery shall abate by death of one or more complainants or defendants, but, such death being suggested and shown to the satisfaction of the court, the suit shall proceed in favor of or against the surviving parties.

In case of death, suit only to abate as to those who are dead.

SEC. 2. When one or more of the complainants or defendants die, and the cause of action shall not survive, the suit shall abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

If all of either party die, suit not to abate, but may be revived.

SEC. 3. If all the complainants or defendants in a suit in chancery die, the suit shall not thereby be abated, but may be revived in the name of the legal representatives of the deceased party.

Bill of revivor not necessary to revive against deceased defendant's representative; proceedings.

SEC. 4. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant, but, the death being suggested, the court, or clerk in vacation, shall, on the petition of the complainant, issue a summons in the nature of a *scire facias*, against all persons residing in the territory, to be made parties, and also make an order of publication as to all such as are non-residents, or whose names are unknown, in the same manner as is provided in the case of original defendants. (*j*)

Manner of serving *sci. fa.* and making publication.

SEC. 5. The summons shall be served and returned, and the order published in the same manner and with the like effect, to all intents and purposes, as is required in cases of summoning or notifying original defendants. (*k*)

Court may cause defendant's appearance to be entered, when.

SEC. 6. If any person so summoned or notified shall not, within such time after the service or notice of publication as is allowed in the case of original defendants, appear and put in an

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(*j*) See sections 11 and 14, of article 1, of this act.

(*k*) See sections 8, 9, 10 and 15, of article 1, of this act.

answer or disclaimer, the court may cause his appearance to be entered. (*l*)

Effect of answer of deceased party; if no answer has been made, proceedings.

Sec. 7. In such cases the answer of the deceased party shall be deemed the answer of such representatives; and if there be no answer, proceedings may be had in all respects against such person as if he had been originally a defendant.

Court may order bill to be taken as confessed, or compel answer.

Sec. 8. The court may, in its discretion, order the bill to be taken as confessed, or compel such representatives to answer by attachment or otherwise.

What petition for revival shall state to obtain further answer from representatives.

Sec. 9. If the deceased party shall have answered, and the surviving party shall deem it necessary to obtain further answer from his representatives, the petition for a revival shall state the matters as to which such further answer is required.

A copy of petition to be annexed to summons.

Sec. 10. A copy of such petition shall be annexed to the summons, or the substance stated in the order of publication against such representatives. (*m*)

Bill may be taken *pro confesso* against representatives; when.

Sec. 11. In such case, if the representatives shall not appear and put in such further answer or disclaimer, the petition may be taken as confessed, or the court may compel an answer by attachment or otherwise.

Representatives may be made complainants, when; may amend the bill.

Sec. 12. Where a complainant shall die, and the cause of action does not survive, his representatives, on affidavit of such death, and on motion in open court, may be made complainants in the suit, and be permitted, if necessary, to amend the bill.

Defendants to answer amended bill.

Sec. 13. The defendants may be compelled to answer such amended bill, and the cause shall proceed to issue and hearing as in other cases.

Representatives failing to make themselves complainants, may be made defendants.

Sec. 14. When the representatives shall not cause themselves to be made complainants on or before the first day of the second term after the death is suggested, the surviving complainant may proceed to make them defendants as in cases where the representatives of a deceased defendant are made parties. (*n*)

If no surviving complainant, or he fail to proceed against representatives of the deceased complainant, proceedings.

Order of court.

Sec. 15. If there be no surviving complainant, or he shall neglect or refuse to proceed against the representatives of a deceased complainant as defendants, the court, upon the petition of the original defendants, may order such representatives to show cause, at a certain day to be named in the order, why the suit should not stand revived in their names, or the bill be dismissed as far as the interest of such representatives is concerned.

Bill may be dismissed if no cause of revivor be shown by representatives.

Sec. 16. If no such cause be then shown, the court, upon proof of reasonable service or publication of such order, may

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(*l*) See sections 1, 2, 3 and 36, of article 2, of this act.

(*m*) See sections 4 and 5, of this article, and notes (*j*) and (*k*).

(*n*) See section 4, of this article.

order the suit to be revived in the name of such representatives, or dismiss the bill as to them, with costs or otherwise.

If defendant die, and cause of action do not survive, proceedings.

SEC. 17. If a defendant shall die, and the cause of action shall not survive, and the complainant shall neglect or refuse to procure an order for the revival of the suit, the court may order it to stand revived, upon the petition of the surviving defendant, against the representatives of the deceased party.

Proceedings of surviving defendant against representatives of co-defendant.

SEC. 18. In such case, the surviving defendants may proceed against such representatives, in the same manner as a complainant, to compel them to appear, abide the answer of the deceased party, or answer, if an answer be required, or have the bill or petition taken as confessed against them; and the court may, in its discretion, stay the suit as against him until such proceedings shall have been had. (*o*)

If representatives of deceased parties are not made parties by the third term, cause shall proceed between survivors.

SEC. 19. In all cases where the representatives of a deceased complainant or defendant shall not be made parties, according to the provisions of this act, on or before the third term after the suggestion of the death, the suit shall abate as to such deceased party and the interest of his representatives therein, and the cause shall proceed in favor of and against the survivors.

Suits shall be dismissed, when.

SEC. 20. If, in such case, there be no surviving complainant or defendant, the suit shall be dismissed.

If a female party marry, her husband may be made a party on his application.

SEC. 21. If a female party to a suit marry at any time before a final decree, her husband may, on his application, be made a complainant or defendant with her, on the order of the court in which the suit is pending, or the judge thereof, to be granted on due proof of the marriage, and after notice to such female party and the other parties to the suit.

Husband may be made a party on application of any party to the suit.

SEC. 22. Such husband may also be made a party with his wife, on the application of any other parties to the suit by petition, upon proof of the marriage, and notice to such husband and wife, and the other parties to the suit.

To proceed as if originally made a party.

SEC. 23. In such case, the husband may contest all facts in the same manner as if he had originally been made a party.

Suit not to abate by death of party acting in a fiduciary capacity.

SEC. 24. When a public officer, trustee, guardian, curator, executor or administrator, as such, shall be a party to any suit, and shall die, resign, or be removed from his office or trust, before a final decree, the suit shall not thereby abate.

His successor may be made a party.

SEC. 25. In such case, his successor may, on his own application, or on the application of any other party to the suit, be made a party by the order of the court, in the same manner as the representatives of a deceased party, as hereinbefore provided.

(*o*) See sections 4, 5, 6, 7, 8, 9, 10 and 11, of this article.

This act construed to give court power to make any person interested a party.

SEC. 26. The provisions of this act, in relation to the bringing in the representatives of a deceased party, shall be construed to apply to all persons who may have become interested in the cause of action by the death of a party.

No such person to be affected in any suit to which he is not a party.

SEC. 27. No such representatives of a deceased party, or other person interested in the cause of action, shall be bound by any order or decree in any cause to which they do not become and are not made parties.

ARTICLE VI.

Of the decree, and subsequent proceedings thereon.

§ 1. Interlocutory decree and final decree thereon against defendant not summoned, or who has not appeared, may be set aside.
2. Decree shall stand absolute, if bill of review be not brought within a year after the service of notice.
3. If bill of review be not filed within five years, decree to stand absolute.
4. What such bill must show in order to set aside the decree.
5. If answer filed, cause to proceed; if not, decree to be absolute.
6. Sale or conveyance shall not be affected by setting aside the decree.
7. In such cases the court may decree an account between the parties.
8. Court may by decree pass the title without any act done by defendants.
§ 9. Court may issue writ of possession, or proceed by attachment.
10. Operation of a decree in case a party refuses to make a conveyance, release or acquittal, as is therein required.
11. Court may compel obedience to its orders and decrees by attachment.
12. When damages may be assessed in lieu of performance of a decree.
13. Appeal allowed to supreme court.
14. Supreme court may grant an appeal by special order any time within two years.
15. Appeal not to operate as a supersedeas unless a recognizance be entered into.
16. Recognizance, how and by whom entered into; its conditions.

Interlocutory decree and final decree thereon against defendant not summoned, or who has not appeared, may be set aside.

SECTION 1. When an interlocutory decree, taking a bill as confessed, shall be made, and a final decree entered thereon against any defendant who shall not have been summoned, as required by this act, or who shall not have appeared to the suit, or have been made a party as the representative of one who shall have been made a party as the representative of one who shall have been summoned or appeared, such final decree may be set aside if the defendant shall, within the time hereinafter limited, appear, and by bill of review, verified by affidavit, show good cause for setting aside such decree as against equity. (q)

Proceedings by bill of review.

Decree shall stand absolute, if bill of review be not brought within a year after service of notice.

SEC. 2. If the complainant shall, at any time after such final decree, serve the defendant, within any of the United States or the territories thereof, with notice of the suit and the decree thereon, and such defendant shall not, within one year after such service, bring his bill of review, the court, on proof of the service of such notice, shall make an order that the decree stand absolute.

(q) See section 3 of this article, and Divers vs. Mark et al., 3 Missouri Rep., 81.

SEC. 3. If such bill of review be not filed within five years after such final decree is rendered, the same shall stand absolute, whether notice thereof be given or not.

Limitation of filing bill of review.

SEC. 4. No such decree shall be set aside, unless the bill of review either show that there is no equity in the original bill, or contain such denials or allegations as amount to a defence to the merits, and then only on condition that the defendant answer the bill within a reasonable time, to be ordered by the court.

What such bill must show in order to set aside the decree.

SEC. 5. If the answer is filed within the time so limited, the cause shall proceed as in other cases; if not, the decree shall be made absolute.

If answer is filed, cause to proceed.

SEC. 6. No sale or conveyance upon a bill for the foreclosure or satisfaction of a mortgage, regularly made by a court of chancery, shall be affected or prejudiced by the setting aside any decree on the appearance of a defendant, as hereinbefore provided.

Sale or conveyance shall not be affected by setting aside the decree.

SEC. 7. In such cases the court may decree an account for all moneys received by the complainant, by virtue of such decree, over and above the amount justly due him, with costs, if the equity of the case require it.

In such cases the court may decree an account between the parties.

SEC. 8. In all cases where the court may decree the conveyance of real estate, or the delivery of personal property, it may by decree pass the title of such property, without any act to be done on the part of the defendants, when in its judgment it shall be proper.

Court may by decree pass the title without any act done by defendants.

SEC. 9. The court may issue a writ of possession, if necessary, to put the party entitled into possession of such real or personal property, or may proceed by attachment or sequestration.

Court may issue writ of possession, &c.

SEC. 10. When an unconditional decree shall be made for a conveyance, release or acquittance, and the party required to execute the same shall not comply therewith, such decree shall be considered and taken to have the same operation and effect, and be as available, as if the conveyance, release or acquittance had been executed conformably to the decree.

Operation of a decree in case a party refuse to make a conveyance, &c., as therein required.

SEC. 11. Courts of chancery may proceed by attachment against all persons who refuse obedience to any lawful order or decree, and may punish the offender by fine and imprisonment, as for contempt, and, if necessary, proceed by sequestration for disobedience of any decree.

Court may compel obedience to its orders and decrees by attachment.

SEC. 12. When complete justice cannot otherwise be done, such courts may, on the petition of the party entitled to the benefit of a final decree, cause an inquiry to be made, by a jury, of

When damages may be assessed in lieu of performance of a decree.

the amount of damages which ought to be paid in lieu of the performance of the decree, and may render a decree for the damages so assessed, and award execution therein.

Appeal allowed to supreme court.

SEC. 13. If any person shall deem himself aggrieved by any final decision, order or decree of any court of chancery, and such person pray an appeal to the supreme court during the term at which the decision, order or decree is made, such appeal shall be granted by the court. (r)

Supreme court may grant an appeal by special order, when.

SEC. 14. The supreme court, or any judge thereof, upon the inspection of the record, may grant an appeal by special order for that purpose, at any time within two years after the making the final decision, order or decree in the cause.

Appeal not to operate as a *supersedeas*, unless a recognizance be entered into.

SEC. 15. The appeal, when the appellant is not an executor or administrator, guardian or curator, suing or sued as such, shall not operate as a stay of proceedings, unless a recognizance be entered into before the supreme or other court having cognizance, or a judge or clerk thereof, and filed in the office of the clerk of the district court.

Recognizance, how and by whom entered into.

SEC. 16. Such recognizance shall be entered into by the appellant, or some responsible person for him, with one or more sufficient securities, to be approved by the court or judge granting the appeal, in a sum sufficient to secure the performance of the decree, and all costs and damages, if affirmed, conditioned that the appellant shall prosecute his appeal, and shall perform such decree as shall be made by the supreme court therein, and pay all damages and costs which may be adjudged against him.

Its conditions.

This act to take effect and be in force from and after its passage.

(r) An appeal will not lie from a decree of a court of equity that partition be made between the parties; such decree is interlocutory; Gudgel & Austin vs. Mead, et al., 8 Missouri Rep., 53.

CHAPTER 129.

PRACTICE AND PROCEEDINGS IN CRIMINAL CASES.

An act to regulate proceedings in criminal cases.

ARTICLE I. Of proceedings to prevent the commission of offences.
II. Of arrest, examination, commitment, and trial.
III. Of grand juries, and their proceedings.
IV. Of indictments, and process thereon.
V. Of the arraignment, and other proceedings before trial.
VI. Of trials for offences, and proceedings incident thereto.
VII. Of the verdict and judgment, and proceedings thereon.
VIII. Of appeals, and writs of error, in criminal cases.
IX. Miscellaneous provisions.
X. Of the custody and management of the estates of convicts.

ARTICLE I.

Of proceedings to prevent the commission of offences.

§ 1. Officers authorized to keep the peace.
2. Duty of magistrate on complaint made that any person has threatened, or is about to commit an offence.
3. Magistrate to issue a warrant, if it appear that there is reason to fear the commission of an offence.
4. Duty of magistrate, when person complained of is brought before him; may cause him to enter into recognizance to keep the peace, when.
5. If he give recognizance he shall be discharged; if he fail, to be committed.
6. If committed, may be discharged, how.
7. Recognizance to be transmitted to clerk of district court.
§ 8. Cases in which such security may be required, without complaint made.
9. Person recognized, to appear at next term of circuit court, or forfeit his recognizance.
10. Complainant failing to appear, party recognized to be discharged.
11. Proceedings on the appearance of the parties.
12. Recognizance not deemed broken except as in the 9th section provided.
13. Court shall order recognizance to be prosecuted, when.
14. Assignment of breaches and evidence in the action.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and, in the execution of that power, to require persons to give security to keep the peace, in the manner provided in this article: The judges of the supreme court, throughout the territory; judges of the district courts, within their respective districts;

Officers authorized to keep the peace.

justices of the peace, in their respective counties; the mayors and chief officers of incorporated cities and towns, within the limits of such corporation.

Duty of magistrate on complaint made that any person has threatened or is about to commit an offence.

SEC. 2. Whenever complaint shall be made in writing, and upon oath, to any such magistrate, that any person has threatened, or is about to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complaint, and any witnesses who may be produced, on oath; to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

Magistrate to issue a warrant, when.

SEC. 3. If it appear, upon such examination, that there is reason to fear the commission of any such offence by the person complained of, it shall be the duty of the magistrate to issue a warrant, under his hand, with or without seal, reciting the complaint, and commanding the officer to whom it is directed, forthwith to apprehend the person so complained of, and bring him before such magistrate.

Duty of magistrate when person complained of is brought before him.

SEC. 4. Upon such person being brought before such magistrate, it shall be the duty of the magistrate to examine all witnesses which either party may require to be examined, and if it shall appear to the satisfaction of such magistrate that there is reason to fear the commission of such offence, he shall require the party complained of to enter into a recognizance in such sum, not exceeding one thousand dollars, as such magistrate shall direct, with one or more sufficient securities, to appear before the district court on the first day of the next term to be holden, and not depart the same without leave; and, in the meanwhile, to keep the peace toward the people of this territory, and particularly toward the complainant.

May cause him to enter into recognizance to keep the peace, when.

If he give recognizance he shall be discharged; if he fail, to be committed.

SEC. 5. If such recognizance be given, the party complained of shall be discharged; but if he fail, or refuse to find surety, it shall be the duty of the magistrate to commit him to prison until he find the same, specifying in the warrant the cause of commitment and the sum in which security was required.

If committed, may be discharged, how.

SEC. 6. Any person committed for not finding surety of the peace, as above provided, may be discharged by any magistrate authorized to bind to the peace, within the county, upon giving such security as was originally required of such person.

Recognizance to be transmitted to clerk of district court.

SEC. 7. Every recognizance to keep the peace, taken by any magistrate pursuant to the foregoing provisions, or pursuant to any other statute, shall be transmitted by such magistrate to the clerk of the district court of the county, on or before the first day of the term of such court next to be holden after taking the same.

SEC. 8. Every person who, in the presence of any magistrate above specified, or of any court of record, shall make any affray, or threaten to kill or beat another, or to commit any offence against his person or property, and all persons who, in the presence of such court or magistrate, shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified; and in case of failure or refusal so to do, he may be committed in like manner as above provided.

Cases in which security may be required without complaint made.

SEC. 9. Every person who shall have entered into a recognizance to keep the peace, shall appear before the district court of the county at the next term, and if he fail to appear, the court shall forfeit his recognizance and order it to be prosecuted, unless reasonable excuse for the default be shown.

Person recognized to appear at next term of district court or forfeit his recognizance.

SEC. 10. When any person shall have been bound to the peace on the complaint of another, and the complainant shall not appear, the party recognized shall be discharged, unless good cause to the contrary be shown.

Complainant failing to appear, party recognized to be discharged.

SEC. 11. Upon the appearance of the respective parties, and in cases where there is no complaint, the court shall examine the evidence, and may either discharge the recognizance taken, or require a new recognizance, as the circumstances of the case may require, for such time as shall appear necessary, not exceeding one year, and in such cases costs shall be adjudged according to the discretion of the court.

Proceedings on the appearance of the parties.

SEC. 12. No recognizance to keep the peace shall be deemed to be broken, except in the case provided for in the ninth section of this article, unless the principal in such recognizance be convicted of some offence, amounting, in judgment of law, to a breach of such recognizance.

Recognizance not deemed broken, except as in ninth section provided.

SEC. 13. Whenever evidence of such conviction shall be produced to the court in which the recognizance is filed or taken, it shall be the duty of the court to order such recognizance to be prosecuted, and the attorney for the territory, or prosecuting for the district, shall proceed thereon accordingly.

Court shall order recognizance to be prosecuted, when.

SEC. 14. In the action on such recognizance, the offence stated in the record of conviction may be assigned as a breach, and such record shall be conclusive evidence of the matters therein stated.

Assignment of breaches and evidence in action.

ARTICLE II.

Of arrest, examination, commitment, and trial.

§ 1. Officers authorized to act under this article.
2. Duty of magistrate on complaint made.
3. When and how warrant to issue.
4. Warrant issued by a judge, executed in any part of this territory; those by a magistrate within the county.
5. The latter, when endorsed, how and where executed.
6. Offender escaping, warrant to issue where he is found.
7. Person charged with a misdemeanor may be brought before a magistrate of the county in which he is taken.
8. When he may be bailed.
9. Recognizance to be certified to the proper clerk.
10. If not bailed, may be taken before a magistrate where offence was committed.
11. If the offence be felony, prisoner must be taken to the county where the offence was committed.
12. Before what magistrate prisoner is to be brought.
13. Complainant and witness examined.
14. Cross-examination allowed to prisoner.
15. Counsel allowed.
16. Witnesses may be separated.
§ 17. Testimony reduced to writing.
18. When prisoner to be discharged.
19. When not, prosecutor and witnesses to be recognized.
20. Security, when required.
21. Infants and married women, how their attendance may be secured.
22. Magistrate may commit witness.
23. When and how prisoner to be bailed.
24. When committed.
25. Endorsement on the warrant of commitment.
26. Examinations and recognizance to be certified to clerk of the court.
27. Penalty on magistrate for failing to certify.
28. Two justices may associate in such investigations.
29. When offender escapes, pursuit to be made.
30. When arrested, proceedings, &c.
31. Penalty on officer for failing to pursue and arrest.
32. Who authorized to bail, &c.
33. When bailed by a court, duty of clerk, &c.
34. Prosecutor's name to be returned to proper county.

Officers authorized to act under this article.

SECTION 1. The magistrates enumerated in the first section of the first article of this act, within their jurisdiction therein specified, shall have power to issue process for the apprehension of any person charged with a criminal offence, and to execute the powers and duties conferred in this article.

Duty of magistrate on complaint made.

SEC. 2. Whenever complaint shall be made to any such magistrate that a criminal offence has been committed, it shall be his duty to examine the complainant, and any witnesses who may be produced by him, on oath.

Shall issue a warrant, when.

Command thereof.

SEC. 3. If it appear on such examination that any criminal offence has been committed, the magistrate shall issue a proper warrant, reciting the accusation, and commanding the officer to whom it shall be directed, forthwith to take the accused and bring him before such magistrate, to be dealt with according to law.

Warrants where to be executed.

SEC. 4. Warrants issued by any judge of the supreme or district court may be executed in any part of this territory, and warrants issued by any other magistrate may be executed in any part of the county within which he is such officer, and not elsewhere, unless endorsed in the manner directed in the next section.

Proceedings if accused escape or be in any other county.

SEC. 5. If the person against whom any warrant, granted by a judge of the probate court, justice of the peace, mayor or chief officer of a city or town, shall be issued, escape, or be in any other county, it shall be the duty of any magistrate authorized to issue a warrant in the county in which such offender may be, or is suspected to be, on proof of the handwriting of the magistrate issuing the warrant, to endorse his name thereon, and thereupon the offender may be arrested in such county by the officer bringing such warrant, or any officer within the county within which the warrant is so endorsed.

Offender escaping, warrant to issue where he is found.

SEC. 6. When any person who shall have committed a criminal offence in one county shall escape into another, any magistrate within the county in which such offender may be found may issue his warrant for the apprehension of such offender, and secure him for trial in the manner hereinafter directed.

If charged with a misdemeanor, may be brought before a magistrate of the county where he is taken.

SEC. 7. When any person, charged with a criminal offence, shall be arrested out of the county in which the offence is alleged to have been committed, and such offence be not punishable with death, or be of the grade of felony, he shall, if he request it, be taken before some magistrate of the county in which he is so arrested.

When he may be bailed, and by whom.

SEC. 8. If the offence charged in the warrant be not punishable with death, or be of the grade of felony, the magistrate before whom such prisoner shall be brought, under the provisions of the last section, may admit him to bail for his appearance before the next court having cognizance of the offence, to be held in the county where the offence is alleged to have been committed.

Recognizances to be certified to the proper clerk.

SEC. 9. When a prisoner is let to bail under the provisions of the last section, the magistrate shall certify that fact on the warrant, and deliver the same, together with the recognizance taken by him, to the officer or other person having charge of the prisoner, who shall deliver the same, without unnecessary delay, to the clerk of the court having cognizance of the offence.

If not bailed, may be taken before a magistrate where offence is committed.

SEC. 10. If such magistrate refuse to let such prisoner to bail, or if such bail as is required be not given, the officer or person having the prisoner in charge shall take him before a magistrate of the county in which the offence is charged to have been committed, as hereinafter provided.

If the offence be felony, prisoner must be taken to the county where the offence was committed.

SEC. 11. If the offence charged in the warrant be punishable with death, or be of the grade of felony, the officer or the person making the arrest shall convey the prisoner to the county in which the offence is charged to have been committed, before some magistrate therein, as in the next section is prescribed.

Before what magistrate prisoner shall be brought.

SEC. 12. Persons arrested under any warrant, for any offence, shall, when no provision is otherwise made, be brought before the magistrate who issued the warrant, or if he be absent, or if his office be vacant, or if he be not authorized to act within the county in which the offence was committed, then before the nearest magistrate in such county; and the warrant by virtue of which the arrest was made, with a proper return endorsed thereon, and signed by the officer or person making the arrest, shall be delivered to such magistrate.

Complainant and witnesses to be examined.

SEC. 13. The magistrate, before whom any such person shall be brought, shall proceed as soon as may be to examine the complainant and witnesses produced in support of the prosecution, also the witnesses of the defendant, on oath, in the presence of the prisoner, in regard to the offence charged, and other matters connected with such charge, which such magistrate may deem pertinent.

Cross-examination to be allowed prisoner.

SEC. 14. If desired by the prisoner, his counsel may be present during the examination, and may cross-examine the complainant and the witnesses on the part of the prosecution.

Counsel allowed.

SEC. 15. And he shall be allowed the assistance of counsel in such examination.

Witnesses may be separated.

SEC. 16. While any witness for or against the prisoner is under examination, the magistrate may exclude from the place in which such examination is had all witnesses who have not been examined, and he may prevent the witnesses from conversing with each other until they shall have been examined.

Testimony reduced to writing.

SEC. 17. The evidence given by the several witnesses examined shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively.

When prisoner to be discharged.

SEC. 18. If, upon the examination of the whole matter, it appear to the magistrate, either that no offence has been committed by any person, or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner.

When not, prosecutor and witnesses to be recognized.

SEC. 19. If it appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty thereof, the magistrate shall bind, by recognizance, the prosecutor, and all material witnesses against such prisoner, to appear and testify before the court having cognizance of the offence, on the first day of the next term thereof, and not to depart such court without leave.

Security, when required.

SEC. 20. Whenever such magistrate shall be satisfied, by due proof, that there is good reason to believe that any such witness will not fulfill the condition of such recognizance unless security is required, he may order such witness to enter into a recognizance, with such security as he shall deem meet for such appearance and attendance at court.

SEC. 21. Infants and married women, and others, by law incapable of contracting, being material witnesses, may be required to procure a surety who will enter into a recognizance for their appearance and attendance as above specified.

Attendance of infants and married women; how secured.

SEC. 22. If any witness, so required to enter into a recognizance or give security, refuse to comply with such order, the magistrate may commit him or her to prison, until he or she comply with such order, or be otherwise discharged, according to law.

Magistrate may commit witness.

SEC. 23. If the offence with which the prisoner is charged be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable, on the first day of the next term thereof, and not to depart such court without leave, and thereupon he shall be discharged.

When and how prisoner to be bailed.

SEC. 24. If the offence be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

When committed.

SEC. 25. Whenever any person shall be committed to jail for a bailable offence, it shall be the duty of the magistrate to endorse on the warrant of commitment the sum in which bail was required.

Endorsement on the warrant of commitment.

SEC. 26. All examinations and recognizances, taken in pursuance of the provisions of this article, shall be certified by the magistrate taking the same, and delivered to the clerk of the court in which the offence is cognizable, on or before the first day of the next term thereof; except that, where the prisoner is committed to jail, the examination of the witnesses for or against him, duly certified, shall accompany the warrant of commitment, and be delivered therewith to the jailor.

Examination and recognizance to be certified to clerk of court.

SEC. 27. If any magistrate refuse or neglect to certify and return, as required by the last section, any examination or recognizance by him taken, he may be required by rule of court forthwith to return the same, and, in case of disobedience, may be proceeded against by attachment.

Penalty on magistrate for failing to certify.

SEC. 28. It shall be lawful for any magistrate to whom any complaint shall be made, or before whom any prisoner shall be brought, as hereinbefore provided, to associate with himself any other magistrate, of the same county, and the powers and duties herein mentioned may be executed by such two magistrates so associated.

Two justices may associate in such investigations.

SEC. 29. Whenever any felony shall be committed, and the offender attempt to escape, public notice thereof shall be immediately given at all places near where the same was committed, and

When offender escapes, pursuit to be made.

pursuit shall be forthwith made after the offender by sheriffs, coroners and constables, and all others who shall be thereto required by any such officer, and the offender may be arrested by any such officer or his assistants, without warrant.

When arrested, proceedings, &c.

SEC. 30. When any person shall be so pursued and arrested, he shall be immediately taken before some magistrate, authorized to act under the provisions of this article, who shall proceed thereon in the same manner as if the prisoner had been arrested on a warrant.

Penalty on officer for failing to pursue and arrest.

SEC. 31. Every sheriff, coroner or constable who shall fail or refuse to pursue and arrest any offender, as required by the preceding provisions, shall be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Who authorized to bail, &c.

SEC. 32. Whenever any person shall be committed to jail, on a warrant of commitment by any magistrate, for a bailable offence, the recognizance, with proper security, may be taken by any court or magistrate authorized by law to issue a writ of habeas corpus.

When bailed by a court, duty of clerk, &c.

SEC. 33. Whenever any prisoner shall be let to bail by any court other than that in which the offence is to be tried, it shall be the duty of the clerk of the court, by which the prisoner was bailed, immediately to transmit the recognizance taken by such court to the clerk of the court in which the party bailed is required to appear.

Name of prosecutor to be returned to proper county.

SEC. 34. If in such case the accused shall be held to answer for the offence, it shall be the duty of the magistrate to make out a certificate of the name, occupation and place of abode of the prosecutor, and return the same, with the recognizance of such prisoner, to the proper county.

ARTICLE III.

Of grand juries and their proceedings.

§ 1. How many compose a grand jury; foreman appointed.
2. When, by whom, and for what reason a grand juror may be challenged.
3. No challenge allowed except as above provided.
4. Foreman authorized to administer oaths, &c.
§ 5. Clerk, how appointed; his duties.
6. Prosecuting attorney to attend grand jury when required.
7. May attend of his own motion for certain purposes; deliberations of the jury private.
8. Clerk to issue subpœnas when required by the foreman or prosecuting att'y.

§ 9. Court may order compulsory process in certain cases.
10. Proceedings when a witness refuses to testify before a grand jury.
11. Proceedings if court determine that witness is bound to answer.
12. Witness committed for refusal, shall not be discharged unless he enter into recognizance.
13. Court may, in its discretion, summon a second grand jury in certain cases.
14. Proceedings in such event.
15. When grand jurors may disclose testimony given before them.
§ 16. Not allowed to disclose votes or opinions of his own, or fellows.
17. Duty in relation to secrecy.
18. Duty of court in giving charge to the grand jury.
19. Indictment only found by a concurrence of twelve; how endorsed.
20. How endorsed when bill is ignored.
21. How presented to the court, &c.
22. When prosecutor necessary.
23. His name endorsed on indictment.
24. Prosecutor adjudged to pay the costs when indictment returned "not a true bill."
25. Not necessary for grand jury to make presentment, when.

How many compose a grand jury.

Section 1. There shall not be more than eighteen grand jurors summoned, nor less than fifteen persons sworn, on any grand jury; and from the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman, and may also appoint a foreman in every case where any person appointed shall be discharged, or excused, before the grand jury shall be dismissed.

Foreman appointed.

When, by whom, and for what reasons a grand juror may be challenged.

Sec. 2. Any person held to answer to a criminal charge may object to the competency of any one summoned to serve as a grand juror, before he is sworn, on the ground that he is the prosecutor, or complainant, upon any charge against such person, or that he is a witness on the part of the prosecution, and has been summoned or bound in a recognizance as such; and if such objection be established, the person so challenged shall be set aside.

No challenge allowed, except as above provided.

Sec. 3. No challenge to the array of grand jurors, or to any person summoned as a grand juror, shall be allowed in any other cases than such as are specified in the last section.

Foreman authorized to administer oaths, &c.

Sec. 4. The foreman of every grand jury, from the time of his appointment to his discharge, shall be authorized to administer any oath, declaration, or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury, for the purpose of giving evidence in any matter cognizable by them.

Clerk, how appointed.

His duties

Sec. 5. Every grand jury may appoint one of their number to be a clerk thereof, to preserve minutes of their proceedings, and of the evidence given before them, which minutes shall be given to the attorney prosecuting in the county, when so directed by the grand jury.

Prosecuting attorney to attend grand jury when required.

Sec. 6. Whenever required by any grand jury, it shall be the duty of the attorney, prosecuting in the county, to attend them for the purpose of examining witnesses in their presence, or giving them advice upon any legal matter.

May attend of his own request for certain purposes.

Sec. 7. Such attorney shall be allowed, at all times, to appear before the grand jury, on his request, for the purpose of

Deliberations of the jury, private.

giving information relative to any matter cognizable by them, (and may be permitted to interrogate witnesses before them,) when they or he shall deem it necessary; but no such attorney, or any other officer or person, except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes on any matter before them.

Clerk to issue subpœnas, when required by foreman or prosecuting attorney.

Sec. 8. Whenever thereto required by any grand jury, or the foreman thereof, or by the prosecuting attorney, the clerk of the court in which such jury is impanneled shall issue subpœnas and other process to bring witnesses to testify before such grand jury.

Court may issue compulsory process against witness, when.

Proceedings.

Sec. 9. If any witness, duly summoned to appear and testify before a grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce his attendance, and may punish the delinquent in the same manner and upon like proceedings as provided by law for disobedience of a subpœna issued out of such court in other cases.

Proceedings if witness refuse to testify before a grand jury.

Sec. 10. If any witness, appearing before a grand jury, shall refuse to testify, (*a*) or to answer any interrogatories in the course of his examination, the fact shall be communicated to the court in writing, on which the question refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

Proceedings if court determine that witness is bound to answer.

Sec. 11. If the court determine that the witness is bound to answer, and he persist in his refusal to testify, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court.

Witness committed for refusal, shall not be discharged unless he enter into recognizance.

Sec. 12. If any such witness shall be committed for a contempt on account of his refusal to testify, and shall persist in such refusal until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged until he enter into a recognizance, with sufficient security, for his appearance at the next term of the court, and not to depart such court without leave.

Court may summon a second grand jury, when.

Sec. 13. If any offence be committed or discovered during the sitting of any court, after the grand jury attending such court shall be discharged, such court may, in its discretion, by an order to be entered on its minutes, direct the sheriff to summon another grand jury.

Proceedings in such event.

Sec. 14. The sheriff shall, accordingly, forthwith summon such grand jury, from the inhabitants of the county qualified to

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(*a*) See crimes and punishments, art. 8, sec. 2, Ward vs. The State, 2 Missouri Rep., 121.

serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner, in all respects, as provided by law in respect to other grand juries.

When grand jurors may disclose testimony given before them.

SEC. 15. Members of the grand jury may be required by any court to testify whether the testimony of a witness examined before such jury is consistent with, or different from, the evidence given by such witness before such court, and they may also be required to disclose the testimony given before them by any person, upon a complaint against such person for perjury, or upon his trial for such offence.

No grand juror to disclose votes or opinions of his own, or fellows.

SEC. 16. No member of a grand jury shall be obliged or allowed to testify or declare in what manner he or any other member of the grand jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question.

Duty in relation to secrecy.

SEC. 17. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person for a felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section shall be deemed guilty of a misdemeanor.

Duty of court in charging grand jury.

SEC. 18. In charging grand juries, the court shall apprise them of the provisions of the three last sections in relation to disclosures, and in what cases and under what circumstances any disclosures may or may not be made.

Indictment only found by concurrence of twelve, &c.

SEC. 19. No indictment can be found without the concurrence of at least twelve grand jurors; when so found, and not otherwise, the foreman of the grand jury shall certify, under his hand, that such indictment is a true bill.*

How endorsed when bill is ignored.

SEC. 20. Where there is not a concurrence of twelve grand jurors in finding an indictment, the foreman shall certify, under his hand, that such indictment is not a true bill.

How presented to the court, &c.

SEC. 21. Indictments found by a grand jury, shall be presented by their foreman, in their presence, to the court, and shall be there filed, and remain as records of such court.

When a prosecutor is necessary.

SEC. 22. No indictment for any trespass against the person or property of another, not amounting to felony, or for the first offence of petit larceny, shall be preferred unless the name of a prosecutor is endorsed thereon, except where the same is preferred upon the information or knowledge of two or more of the grand jury, or on the information of some public officer in the necessary discharge of his duty, in which case a statement of the fact shall be made at the end of the indictment, and signed by the foreman of the grand jury.**

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* Thomas vs. The State, 6 Missouri Rep., 457; Pratte vs. The State, 8 Missouri Rep., 247.

His name shall be endorsed on indictment.

Sec. 23. The name of the prosecutor shall be endorsed as such by himself, or, where his name has been certified as prosecutor with the examination as provided by law, the endorsement may be made by the prosecuting attorney; but no indictment shall be quashed for the want of such endorsement, if the same shall be made before the motion to quash is disposed of. (*b*)

When adjudged to pay the costs.

Sec. 24. If any indictment, so endorsed, shall be returned by the grand jury, "not a true bill," the prosecutor shall be adjudged to pay the costs. (*c*)

Grand jury not to present indictment, when.

Sec. 25. It shall not be necessary for any grand jury to present any presentment prior to the presentation of the indictment.

ARTICLE IV.

Of indictments and process thereon.

§ 1. Indictments for a felony not open to inspection.
2. Disclosing fact that indictment is found, a misdemeanor.
3. Qualification of the two last sections.
4. In case of two indictments for the same matter, first to be quashed.
5. In what county, receivers of stolen property may be indicted, tried and convicted.
6. In what counties indictments, trial and conviction may be had for offences on board of vessels, &c.
7. In what county indictments may be found for offences committed near a boundary line of a county.
8. Allegation of property in indictment in case of several owners or partners.
9. Proceedings when wound, &c., in one county, and death in another.
10. Proceedings when wound, &c., given in this territory, and death in another.
11. Proceedings when wound, &c., given in another state and death in this territory.
12. Indictments, &c., against accessories, in what counties may be had.
§ 13. Accessories to be tried, although principal not arrested.
14. When robbery and burglary may be tried in county to which property is carried.
15. Two or more charged jointly with the commission of an offence, to be included in same indictment.
16. Counts for different degrees of same offence.
17. Indictments not to be affected by certain omissions and defects.
18. Warrants on indictments, by whom issued and where executed.
19. Letting to bail of persons indicted, by what officers.
20. For misdemeanors, sheriff may admit to bail any one who will give security, &c.
21. No other officers authorized to let to bail in such cases.
22. Recognizance on letting to bail, where to be filed, &c.
23. If any person abscond or flee after indictment, &c., cause may be continued; proceedings.

** The State vs. M'Courtney, et al., 6 Missouri Rep., 649.

(*b*) See State vs. M'Courtney, 6 Missouri Rep., 649.

(*c*) Where an indictment, so endorsed, is returned "not a true bill," the liability of the prosecutor is determined by the jury who try the case. See title costs in criminal cases.

SECTION 1. When any indictment shall be found against any person for a felony, not being in actual confinement or held by recognizance to answer thereto, such indictment shall not be open to the inspection of any person except the judge and clerk of the court and the prosecuting attorney, until the defendant therein shall have been arrested.

Indictment for felony not open to inspection, when

SEC. 2. No judge, prosecuting attorney, or other officer of the court, shall disclose the fact of any such indictment being found until the defendant therein shall have been arrested or recognized to answer the same; and any person violating this provision shall be deemed guilty of a misdemeanor.

Disclosing fact that indictment is found

SEC. 3. The two last sections shall not extend to any officer making any such disclosure by the issuing or in the execution of any process on such indictment, or in any other way, when it shall become necessary in the discharge of any official duty.

Qualifications of two last sections.

SEC. 4. If there be at any time pending against the same defendant two indictments for the same offence, or two indictments for the same matter, although charged as different offences, the indictment first found shall be deemed to be suspended by such second indictment, and shall be quashed.

If two indictments for same matter, first to be quashed.

SEC. 5. When any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted, tried and convicted in any county where he received or had such property, notwithstanding such theft was committed in another county. (*d*)

In what county, receivers of stolen property may be indicted, &c

SEC. 6. When any offence shall have been committed within this territory on board any vessel in the course of any voyage or trip, an indictment for the same may be found, and a trial upon conviction thereon had, in any county through which, or any part of which, such vessel shall be navigated in the course of the same voyage or trip, or in the county where such voyage or trip shall terminate, in the same manner and with like effect as in the county where the offence was committed.

In what counties indictments may be found for offences on board of vessels, &c.

SEC. 7. Where an offence shall be committed on the boundary of two counties, or within five hundred yards of such boundary, or where the person committing the offence shall be on one side of such boundary and the injury be done on the other side of such boundary, the indictment may be found and the trial and conviction thereon had in either of such counties.

In what county for offences committed near the boundary line.

SEC. 8. When any offence shall be committed upon, or in relation to, any personal property belonging to several partners or owners, the indictment for such offence shall be deemed sufficient

Allegation of property in indictment in case of several owners, &c.

(*d*) See act crimes and punishments, article 9, sections 3 and 4, when the offence was committed in another state.

if it allege such property to belong to any one or more of such partners or owners, without naming all of them.

Proceedings when wound, &c., in one county and death in another.

Sec. 9. When any mortal wound shall be given, or any poison shall be administered, or any means shall be employed, in one county, by which any human being shall be killed, who shall die thereof in another county, an indictment for such offence may be found in either county, and the same proceedings shall be had thereon, in all respects, as if the offence had been commenced and consummated in the county in which such indictment shall be found.

Proceedings when wound, &c., given in this territory and death in another.

Sec. 10. If any such wound or mortal injury shall be inflicted on any human being in this territory, who shall die thereof in another territory or state, an indictment may be found and a trial and conviction thereon had in the county in which the wound or mortal injury was given or inflicted, in all respects, as if the death had happened in such county.

Proceedings when wound, &c., given in another state and death in this territory.

Sec. 11. If any such wound or mortal injury shall have been inflicted in another state or territory on any human being who shall die thereof within this territory, an indictment may be found and a trial and conviction thereon had in the county in which the death happened, in all respects, as if the wound or injury had been inflicted in such county.

Indictments against accessories, in what counties may be had.

Sec. 12. An indictment against any accessory to any felony may be found in any county where the offence of such accessory shall have been committed, notwithstanding the principal offence may have been committed in another county, and the like proceedings shall be had therein, in all respects, as if the principal offence had been committed in the same county.

Accessories to be tried, although principal not arrested.

Sec. 13. An accessory before or after the fact (e) may be indicted, tried and punished, notwithstanding the principal felon may have been arrested, tried or convicted.

When robbery and burglary may be tried in county to which property is carried.

Sec. 14. When property, stolen in one county and brought into another, shall have been taken by burglary or robbery, the offender may be indicted, tried and convicted for such burglary or robbery in the county into which such stolen property was brought, in the same manner as if such burglary or robbery had been committed in that county; and whenever any larceny shall be committed in one county and the property or effects so stolen shall be carried into or through any other county, such larceny shall be deemed to have been perfected in every county into which, or through which, such property or effects shall have been carried.

(e) See title crimes and punishments, article 9, sections 5 and 6; 1 Anne, statute 2, c. 9, s. 2; 22 Geo. 3, c. 58, s. 1; 7 Geo. 4., c. 64, s. 9; 3 Geo. 4, c. 38, s. 3.

Two or more to be included in same indictment, when.

SEC. 15. When two or more persons are charged with having committed an offence jointly, all concerned shall be included in one indictment.

Counts for different degrees of same offence.

SEC. 16. When, by law, an offence comprises different degrees, an indictment may contain counts for the different degrees of the same offence or for any of such degrees. (*f*)

Indictments not to be affected by certain omissions or defects

SEC. 17. No indictment shall be deemed invalid, nor shall the trial, judgment or other proceedings thereon be stayed, arrested, or in any manner affected, *first*, by reason of the omission or misstatement of the defendant's title, occupation, estate or degree, or of the county or town of his residence, where the defendant shall not be misled or prejudiced by such omission or misstatement; or, *second*, by the omission of the words "with force and arms," or any words of similar import; or, *third*, by omitting to charge any offence to have been contrary to a statute or statutes, notwithstanding such offence may have been created or the punishment declared by a statute; or, *fourth*, by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant.

Warrants on indictments, by whom issued and where executed.

SEC. 18. A warrant or other process for the arrest of the defendant indicted may be issued by the court in which such indictment has been found, or by the judge thereof, or by any judge of the supreme court, and by no other officers, and may be directed to and executed in any county in this territory.

Defendant may be let to bail, by what officers.

SEC. 19. Where the indictment is for a bailable offence, the defendant may be let to bail by the court in which such indictment is pending; or, if such court be not sitting, by the judge thereof, or by any judge of the probate court of the county in which the indictment is pending.

Sheriff may admit to bail for misdemeanor.

SEC. 20. When the indictment is for a misdemeanor, the sheriff may himself admit the defendant to bil, with sufficient security, in a sum proportioned to the offence, and which in no case shall be less than one hundred dollars, and the recognizance taken shall be signed by the prisoner and his securities, and attested by the sheriff.

No other officer to let to bail.

SEC. 21. No court or officer other than those specified in the two last sections shall let to bail any person indicted for any offence.

Recognizance to be filed with the clerk.

SEC. 22. Whenever any person indicted for any offence shall be let to bail, the officer taking the recognizance shall immediately file the same with the clerk of the court in which the indictment is pending.

(*f*) See title crimes and punishments, article 9, section 14, and same article, section 16.

Cause may be continued from term to term, when.

* Sec. 23. If any person, indicted for a criminal offence, abscond or flee from justice, or cannot be found to be served with process, or, being let to bail, shall not appear according to the condition of the recognizance, the cause may be continued from term to term, without issuing process on the indictment; and such process may be issued at any time on the application of the prosecuting attorney.

ARTICLE V.

Of the arraignment, and other proceedings, before trial.

§ 1. All indictments tried at first term, unless, &c.
2. In capital cases, when copy of indictment to be furnished the prisoner.
3. In other cases, defendant entitled to a copy of indictment, on demand.
4. Duty of the court to assign counsel in certain cases; his privileges.
5. When plea of not guilty to be entered.
6. Dilatory pleas, when admissible.
7. Venue of plea laid without the county, how tried.
8. Defendant entitled to subpœnas, &c.
9. Disobedience punished as in civil cases.
10. Tender of fees unnecessary in criminal cases.
11. In what case a commission to take depositions may be granted.
12. Officer prosecuting may join in such commission, &c.
13. Interrogatories to be annexed; how executed and returned.
14. Depositions *de bene esse*, how taken, &c.
15. Change of venue, how made when the judge is indicted.
16. When ordered on account of interest in the judge.
17. When allowed, because of prejudice in the people, &c.
18. When allowed from one district to another.
19. Petition, by whom made, &c.
20. Such petition must be accompanied with an affidavit.
21. Change of venue allowed to be made by the judge, upon facts within his own knowledge.
22. Order of removal.
23. When application must be made during the term.
§ 24. If facts sufficient arise since last continuance, change allowed.
25. Order for removal of a cause, how made.
26. Recognizance, how and when taken.
27. Such recognizance may be taken by whom.
28. Restrictions upon the privilege.
29. Order to remove the body, when made.
30. Duty of sheriff in obeying the order.
31. Transcript of the record to be made out, &c.
32. Cause to proceed in all respects as if it originated therein.
33. How to proceed if transcript be not transmitted or received, &c., at the first term of court to which it was ordered.
34. Defendant, witness, &c., who are under recognizance, having notice of removal, to attend the place of trial; failure to do so deemed a breach of recognizance.
35. Order of removal made in term, deemed a notice to persons under recognizance; in other cases, notice how, by whom given, and how served.
36. Costs and expenses in the removal, by what court to be adjusted; how taxed, &c.
37. Penalty on clerk who shall neglect to perform duties enjoined on him in removal of causes.
38. Several defendants, and cause for removal only as to part, others to be tried as if no order was made.
39. When cause is continued, the parties may require witnesses to enter into recognizance, &c.; penalty for nonattendance at next term; attachment may issue.

Indictments, when tried.

Section 1. All indictments shall be tried at the first term at which the defendant appears, unless the same be continued for cause. If the defendant appear or is in custody at the time at which the indictment is found, such indictment shall be tried at that term, unless continued for cause.

In capital cases, copy of the indictment to be furnished to the prisoner, when.

SEC. 2. It shall be the duty of the clerk of the court in which an indictment against any person, for a capital offence, may be pending, whenever the defendant shall be in custody, or held by recognizance to answer thereto, to make out a copy of such indictment, and cause the same to be delivered to the defendant or his counsel at least forty-eight hours before he shall be arraigned on such indictment. (g)

In other cases defendant entitled to a copy on demand, &c.

SEC. 3. Every person who shall be indicted for any offence not capital, who shall have been arrested or held by recognizance to appear and answer to such indictment, shall, on demand, and on payment of the fees allowed by law therefor, be entitled to a copy of the indictment and all endorsements thereon.

Court to assign counsel in certain cases.

SEC. 4. If any person, about to be arraigned upon an indictment for a felony, be without counsel to conduct his defence, and be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner at all reasonable hours; and any lawyer practicing in such court, when so assigned as counsel, shall engage in such defence without fee; and any such lawyer who shall wilfully refuse, shall be suspended from practicing in such court for twelve months.

When plea of not guilty to be entered.

SEC. 5. When any person shall be arraigned upon any indictment, it shall not be necessary to ask him how he will be tried; and, if he deny the charge in any form, or require a trial, or if he refuse to plead or answer, and in all cases when he does not confess the indictment to be true, a plea of not guilty shall be entered, and the same proceedings shall be had, in all respects, as if he had formally pleaded not guilty to such indictment.

Dilatory pleas, when admissible.

SEC. 6. No plea in abatement, or other dilatory plea to an indictment, shall be received by any court, unless the party offering such plea shall prove the truth thereof, by affidavit, or some other evidence.

Venue of plea laid without the county, how tried.

SEC. 7. When any matters shall be pleaded to an indictment as having occurred in any other county than that in which the indictment was found, it shall be tried in the same manner as if it had been alleged to have occurred in the same county where such plea is tendered.

(g) If the defendant pleads and goes to trial, without objecting for the want of such copy, the neglect of duty by the clerk will not be sufficient ground to set aside the verdict; Lisle vs. The State, 6 Missouri Rep., 429.

Defendant entitled to subpœnas, &c.

SEC. 8. Every person indicted or prosecuted for a criminal offence shall be entitled to subpœnas and compulsory process for witnesses in like manner and under like circumstances as parties in civil cases.

Disobedience punished as in civil cases.

SEC. 9. Disobedience to any such subpœnas shall be punished in the same manner and upon the like proceedings as provided by law in civil cases; and every delinquent witness shall be liable, to the party at whose instance he was summoned, in the same manner, and to the same extent, as in cases of witnesses summoned in a civil suit.

Tender of fees not necessary in criminal cases.

SEC. 10. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the territory, or on the part of the defendant; but such witness shall be bound to attend, and be liable for his non-attendance in the same manner as if the fees allowed to witnesses had been duly paid to him.

In what case a commission to take depositions may be granted.

SEC. 11. When any issue of fact is joined in any criminal case, and any material witness for the defendant resides out of the territory, or, residing within the territory, is *enciente*, sick or infirm, or is bound on a voyage, or is about to leave this territory, such defendant may apply to the court in which the cause is pending for a commission to examine such witness upon interrogatories thereto annexed, and such court may grant the same upon the like proof and on the like terms as provided by law in civil cases.

Officer prosecuting may join in such commission, &c.

SEC. 12. The court granting such commission may permit the officer prosecuting for the territory to join in such commission, and to name material witnesses, to be examined on the part of the territory, whose personal attendance cannot be obtained for like causes.

Interrogatories to be annexed; how executed and returned.

SEC. 13. Interrogatories, to be annexed to such commission, shall be settled, and such commission shall be issued, executed and returned in the manner prescribed by law in respect to commissions in civil cases, and the depositions taken thereon and returned shall be read in the like cases and with the like effect as in civil suits.

Depositions *de bene esse*, how taken, &c.

SEC. 14. The defendant, in any criminal cause, may also have witnesses examined on his behalf, conditionally, upon a commission issued by the clerk of the court in which the cause is pending, in the same cases and upon the like notice to the prosecuting attorney, with the like effect and in all respects as is provided by law in civil suits.

Change of venue, how made when judge is indicted.

SEC. 15. Whenever any indictment or prosecution for a criminal offence shall be pending in any court having jurisdiction thereof, against the judge thereof, the same shall be removed to the court of some county where some other judge may preside, upon the order, in writing, of the prosecuting attorney, or upon the order of any judge of the supreme court.

When ordered on account of interest, &c., in the judge

SEC. 16. When any indictment or criminal prosecution shall be pending in any district court, the same shall be removed by the order of such court, or the judge thereof, to the district court of some county in a different district, in either of the following cases: *First*, when the judge of the court in which the cause is pending is near of kin to the defendant, by blood or marriage; or, *second*, where the defendant is a slave, and such judge, or a person near of kin to him, is the owner or has any interest in such slave; or, *third*, where the offence charged is alleged to have been committed against the person or property of such judge, or some person near of kin to him; or, *fourth*, where the judge is in anywise interested or prejudiced, or shall have been counsel in the cause.

When allowed because of prejudice in the people, &c.

SEC. 17. Any criminal cause pending in any district court may be removed by the order of such court, or the judge thereof, to the district court of another county in the same district, whenever it shall appear, in the manner hereinafter provided, that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair trial cannot be had therein.

When allowed from one district to another.

SEC. 18. Whenever it shall appear, in the manner hereinafter provided, that the inhabitants of the entire district are so prejudiced against the defendant that a fair trial cannot be had therein, the cause shall, by order of the court or judge, be removed to another district in which such prejudice is not alleged to exist.

Petition, by whom made, &c.

SEC. 19. Such order of removal, as specified in the two preceding sections, shall be made on the application of the defendant; or where the defendant is under the age of sixteen, or is a slave, on the application of such slave, or of the owner of such slave, or the parent or guardian of such infant; and if such infant has no parent or guardian, then on the application of any two respectable citizens of the county where the cause is at issue.

Must be accompanied by an affidavit.

SEC. 20. The petition of the applicant for a change of venue shall set forth the facts, and the truth of the allegations shall be supported by the affidavit of the defendant or some credible disinterested person, and reasonable previous notice of such application must be given to the prosecuting attorney.

When court or judge may make an order for change of venue without application.

SEC. 21. Whenever it shall be within the knowledge of a court or judge, that facts exist which would entitle a defendant to the removal of any criminal cause, on his application such judge or court may make an order for such removal without any application by the party for that purpose.

Order of removal.

SEC. 22. Every order for the removal of any cause, under the foregoing provisions, shall state whether the same is made on the application of the party, or on facts within the knowledge of the court or judge, and shall specify the cause of removal, and designate the county to which the cause is removed.

When application must be made during the term.

SEC. 23. No order for the removal of any cause shall be made, on the application of the defendant, for the causes specified in the seventeenth or eighteenth sections, unless such application be made during the term of the court at which the indictment is found, provided said defendant be in custody or on recognizance; and if not so in custody, or held to bail, then the application may be made at or before the first term after the defendant shall have been arrested, and not thereafter, except as provided for in the next succeeding section.

If facts sufficient arise since last continuance, change may be allowed.

SEC. 24. If the defendant will, in addition to the oath requisite in ordinary and timely applications, swear that the facts on which he grounds his application have first come to his knowledge since the last preceding continuance of the cause, the court shall grant a change of venue, although such application be made at a term subsequent to that at which the prisoner was likely to be arraigned.

Order how made.

SEC. 25. Every order for the removal of a cause, if made in term, shall be entered on the minutes; if made by an officer, out of court, shall be in writing and signed by such officer, and shall be filed by the clerk, with the petition, if any, as a part of the record in the cause.

Recognizance how and when taken.

SEC. 26. When such order shall be made, the defendant, if not in confinement or custody, shall enter into a recognizance, with sufficient sureties, for his appearance to answer the charge in the court to which the cause is to be removed, at the next term thereof, and not to depart such court without leave.

By whom.

SEC. 27. Such recognizance may be taken by the court or judge making the order, or by any court or officer authorized by law to let to bail after indictment, and, when taken out of the court in which the cause is pending, shall be filed with the clerk thereof.

Restrictions upon the privilege.

SEC. 28. No order for the removal of a cause shall be effectual in the case of any defendant, not in confinement or custody, unless a recognizance, taken as herein directed, be entered into in open court, or delivered with the order, and filed with the clerk of the court, nor unless such order be delivered before any juror is sworn in the cause; and in no case shall a second removal of any cause be allowed.

SEC. 29. If the defendant be in actual custody or confinement, the court or officer granting the order of removal shall also make an order commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed, and then deliver him to the keeper of such jail, together with the warrant or process by virtue of which he is imprisoned or held.

Order to remove the body, when made.

SEC. 30. The sheriff shall obey such order without unnecessary delay, and shall endorse on the commitment or process, by virtue of which the prisoner was in his custody, the reason of the change of custody, and shall deliver such warrant, with the prisoner, to the keeper of the jail of the proper county, who shall give such sheriff a receipt therefor, and take charge of and keep the prisoner in the same manner as if he had been originally committed to such jail.

Duty of sheriff in obeying the order.

SEC. 31. Whenever any order shall be made for the removal of any cause under the foregoing provisions, the clerk of the court in which the same is pending shall make out a full transcript (*h*) of the record and proceedings in the cause, including the order of removal, the petition therefor, (if any,) and the recognizance of the defendant, and of all witnesses, and shall transmit the same, duly certified under the seal of the court, to the clerk of the court to which the removal is ordered.

Transcript of the record to be made out, &c.

SEC. 32. On the receipt of such transcript by the clerk of the court to which any cause is removed, he shall file the same as a record of his court, and the same proceedings shall be had in the cause in such court, in the same manner and in all respects, as if the same had originated therein.

Cause to proceed in all respects as if it originated therein

SEC. 33. If such transcript shall not be transmitted, or shall not be received at or before the first term of the court to which the cause is ordered to be removed, or if such transcript shall be lost or destroyed, the cause shall not by reason thereof be discontinued, but such transcript, or another in lieu thereof, may be transmitted and filed, as required by this act, at or before the next succeeding term of such court, and proceedings thereon shall be had as if no such failure or loss had happened.

How to proceed if transcript be not transmitted or received, &c.

SEC. 34. The defendant, and all witnesses, and others who shall have entered into any recognizance to attend the trial of such cause, having notice of the removal thereof, shall be bound to attend at the time and place of trial, in the county to which the cause is removed; and a failure to do so shall be deemed a breach of recognizance.

Defendant and witnesses under recognizance, bound to attend the trial, &c.

(*h*) Ruby vs. the State, 7 Missouri Rep., 206.

Order of removal a notice to persons under recognizance, when; notice in writing shall be given, when.

Sec. 35. When the order of removal is made in term, it shall be deemed a notice to every person who shall have entered into a recognizance to appear at such term; in other cases the notice shall be in writing, signed by the prosecuting attorney, or clerk of the court, and served on the person so recognized, in the manner provided by law for serving notices.

Costs of removal, how adjusted and taxed.

Sec. 36. The costs and expenses necessarily incurred in the removal of any such cause, under the foregoing provisions, shall be adjusted and allowed by the court wherein the cause is tried, and shall be taxed as other costs in such cause.

Penalty on clerk who shall neglect to perform duties enjoined on him in removal of causes.

Sec. 37. If any clerk of the district court shall neglect or refuse to perform any duty in relation to the removal of a cause enjoined on him by the foregoing provisions, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by action of debt in the name and to the use of the territory.

Proceedings when there are several defendants, and order of removal as to part only.

Sec. 38. Where there are several defendants in any indictment in a criminal prosecution, and the cause of the removal thereof exists only as to part of them, the other defendants shall be tried, and all proceedings had against them, in the county in which the case is pending, in all respects as if no order of removal had been made as to any defendant.

On continuance, witnesses may be recognized.

Penalty for non-attendance at next term.

Sec. 39. Whenever a criminal case shall be continued, all the witnesses in attendance shall be called by the court, and as many of them as the parties may desire shall be required to enter into recognizance for their appearance at the next term at which such case shall be set for trial; and if any such witness shall fail to appear in said court when so called for the purpose of being recognized, such witness shall forfeit all his fees as witness in such cause, and may be compelled so to appear by attachment.

ARTICLE VI.

Of trials for offences, and proceedings incident thereto.

§ 1. Issues of fact on indictments, how to be tried.
2. Jury of part aliens not allowed; aliens, by what jurors to be tried.
3. On indictment for criminal offence, in what cases defendant entitled to peremptory challenge of jurors.
4. Territory may challenge peremptorily four jurors.
5. Number of jurors to be summoned in criminal cases.
§ 6. In what cases, and when list of jurors to be delivered to defendant.
7. Grand jurors who found indictment not to be on petit jury.
8. On trial of a slave, or of a person for injury to a slave, who shall not serve as a juror.
9. Certain persons not to serve as jurors in certain cases.
10. Persons who entertain certain opinions,

not allowed as jurors for offences punishable with death.

§ 11. Witness not to be sworn as a juror if challenged for that cause; juror to disclose facts in the cause, if he knows any, in open court.

12. What shall be good cause of challenge to a juror.

13. Challenges for cause, how tried; cause discovered after juror is sworn, may be discharged; when.

14. Defendant to be present at trial in person or by attorney, &c.; admitted to make proof by competent witnesses.

15. Proceedings, how regulated.

16. Law in civil cases, in what instances extended to criminal proceedings.

17. Verdict may be set aside, and new trial had, on application of defendant; continuance granted to either party; when.

18. On trials for treason, what evidence of overt acts to be received; upon proof of what overt act conviction to be had.

§ 19. Proof necessary to sustain indictments for conspiracy.

20. Certain proof sufficient on indictments for rape, or the crime against nature.

21. On the trial of any criminal cause, the existence, constitution, &c, of any banking company, how proved.

22. Prosecutor, or person injured by offence, &c., competent witness.

23. When defendants to be tried separately; when jointly.

24. Defendants may file bills of exception; proceedings.

25. Prisoners indicted, when to be discharged.

26. Person indicted and held to answer on bail, when to be discharged.

27. On application for discharge under either of the two preceding sections, proceedings of the court.

28. Courts not to sum up or comment on the evidence, or charge the jury as to matters of fact, &c.; but may as to points of law.

SECTION 1. All issues of fact in any criminal cause shall be tried by a jury to be selected, summoned and returned in a manner prescribed by law.

Issues of fact, how tried.

SEC. 2. No alien shall be entitled to a jury of part aliens or strangers for the trial of any indictment, but in every case the jurors shall be such only as are qualified to serve according to the laws of this territory.

Jury for trial of aliens.

SEC. 3. The defendant in every indictment for a criminal offence shall be entitled to a peremptory challenge of jurors, in the following cases, as follows: *First*, if the offence charged is punishable with death, or by imprisonment in the penitentiary not less than for life, to the number of twenty, and no more; *second*, if the offence be punishable by like imprisonment, not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of twelve, and no more; *third*, in any other case punishable by imprisonment in the penitentiary, to the number of eight, and no more; *fourth*, in cases not punishable with death or imprisonment in the penitentiary, to the number of four, and no more.

On indictment for trial of criminal offence, in what cases defendant entitled to a peremptory challenge of jurors.

SEC. 4. In all criminal trials, the territory may challenge peremptorily, four jurors, if demanded by the prosecuting attorney or defendant, or at the instance of the court.

Territory may challenge four jurors.

SEC. 5. There shall be summoned and returned in every criminal cause, a number of qualified jurors equal to the number of peremptory challenges, and twelve in addition.

Number of jurors to be summoned in criminal cases.

In what cases and when list of jurors to be delivered to defendant.

SEC. 6. A list of the jurors summoned shall be delivered to the defendant, in the cases specified in the two first subdivisions of the third section of this article, at least forty-eight hours before the trial, (*i*) and in other cases before a jury is sworn, if such list be requested.

Grand juror not to serve on petit jury.

SEC. 7. No person who was a member of the grand jury or inquest by which any indictment or presentment was found in any cause, shall serve as a petit juror on the trial of such cause.

Who shall not serve as jurors where slaves are concerned.

SEC. 8. Upon the trial of any indictment against any slave, or against any person for an injury to a slave, neither the owner of such slave, nor any person of kin to him by blood or marriage, shall serve as a juror.

Certain persons not competent jurors.

SEC. 9. Where any indictment alleges an offence against the person or property of another, neither the injured party, or any person of kin to him, shall be a competent juror on the trial of such indictment; nor shall any person of kin to the prosecutor, or defendant, in any case, serve as a juror on the trial thereof.

Persons on account of opinions not allowed to serve.

SEC. 10. Persons whose opinions are such as to preclude them from finding any defendant guilty of an offence punishable with death, shall not be allowed or compelled to serve as jurors on the trial of an indictment for any offence punishable with death.

Not to be sworn if challenged, &c.

SEC. 11. No witness in any criminal case shall be sworn as a juror therein, if challenged for that cause before he is sworn; and if any juror shall know any thing relative to the matter in issue, he shall disclose the same in open court.

What shall be a good cause of challenge to a juror.

SEC. 12. It shall be a good cause of challenge to a juror, that he has formed or delivered an opinion on the issue, or any material fact to be tried; but if it appear that such opinion is founded only on rumor, and not such as to prejudice or bias the mind of the juror, he may be sworn.

Challenges for cause, how tried, &c.

If cause discovered after juror is sworn, may be discharged.

SEC. 13. All challenges for cause may be tried by the court on the oath of the person challenged, or by triers on other evidence, and such challenges shall be made before the juror is sworn; but if the cause of challenge be discovered after the juror is sworn, and before any part of the evidence is delivered, (*j*) he may be discharged or not, in the discretion of the court.

Defendants to be present at trial, in person or by attorney.

Admitted to make proof, &c.

SEC. 14. No person indicted for a felony can be tried unless he be personally present during the trial, nor can any person indicted for any other offence be tried unless he be present, either personally or by his counsel; and every person indicted shall be

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(*i*) See Lisle vs. the State, 6 Missouri Rep., 426.

(*j*) See Lisle vs. the State, 6 Missouri Rep., 430—1. It is too late to make such objections after verdict.

admitted to make any lawful proof, by competent witnesses or other testimony, in his defence.

Proceedings, how regulated.

SEC. 15. The proceedings prescribed by law in civil cases in respect to the impanneling of jurors, the keeping them together, (*k*) and the manner of rendering their verdict, shall be had upon trials on indictments and prosecutions for criminal offences, except in cases otherwise provided by statute.

Law in civil cases, in what instances extended to criminal proceedings.

SEC. 16. The provisions of law in civil cases relative to compelling the attendance and testimony of witnesses, their examination, the administration of oaths and affirmations, and proceedings as for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases so far as they are in their nature applicable thereto, subject to the provisions contained in any statute.

Verdicts may be set aside, new trials awarded, &c., as in civil cases.

SEC. 17. Verdicts may be set aside and new trials awarded on the application of the defendant, and continuances may be granted to either party, in criminal cases, for like causes and under the like circumstances as in civil cases.

Evidence of overt acts on trials for treason, &c.

SEC. 18. In trials for treason, no evidence shall be given of any overt act that is not expressly laid in the indictment, and no conviction shall be had upon any indictment for such offence unless one or more overt acts be expressly alleged therein.

Proof necessary to sustain an indictment for conspiracy.

SEC. 19. In trials for conspiracy, in those cases where an overt act is required by law to consummate the offence, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but other overt acts, not alleged in the indictment, may be given in evidence on the part of the prosecution.

Proof on indictment for rape, &c.

SEC. 20. Proof of actual penetration into the body shall be sufficient to sustain an indictment for rape, or for the crime against nature.

Evidence of existence, powers, &c., of banking company, or corporation.

SEC. 21. If, on the trial or other proceeding in a criminal cause, the existence, constitution or powers of any banking company or corporation shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the state, government, or country, by which such corporation was created.

Prosecutor or person injured, a competent witness.

SEC. 22. No person shall be rendered incompetent to testify in criminal causes by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution.

(*k*) *Vide* M'Lean vs. the State, 8 Missouri Rep., 153.

When defendants may be tried separately, when jointly.

SEC. 23. When two or more defendants are jointly indicted for any felony, any one defendant requiring it shall be tried separately; in other cases, defendants jointly indicted shall be tried separately or jointly, in the discretion of the court.

Defendants may file bills of exceptions; proceedings.

SEC. 24. On the trial of any indictment or prosecution for a criminal offence, exceptions to any decisions of the court may be made in the same cases and manner provided by law in civil cases, and bills of exception shall be settled, signed, sealed and filed, as now allowed by law in personal actions; and the same proceedings may be had to compel or procure the signing and sealing of such bills, and the return thereof, as in civil cases.

Prisoners indicted and committed, when to be discharged.

SEC. 25. If any person, indicted for any offence and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offence, which shall be held after such indictment found, he shall be entitled to be discharged so far as relates to the offence for which he was committed, unless the delay shall happen on the application of the prisoner, or shall be occasioned by the want of time to try the cause at such second term.

Indicted and held to answer on bail, when entitled to discharge.

SEC. 26. If any person indicted for any offence, and held to answer on bail, shall not be brought to trial before the end of the third term of the court in which the cause is pending, which shall be held after such indictment found, he shall be entitled to be discharged so far as relates to such offence, unless the delay happen on his application, or be occasioned by the want of time to try such cause at such third term.

Proceedings of the court on application for discharge under either of last two sections.

SEC. 27. If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied there is material evidence on the part of the territory which cannot then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued to the next term, and the prisoner remanded or admitted to bail, as the case may require.

Courts not to sum up or comment on evidence or charge the jury as to matter of fact, except, &c., but may as to matters of law.

SEC. 28. The court shall not, on the trial of the issue on any indictment, sum up or comment upon the evidence, or charge the jury as to matters of fact, unless requested so to do by the prosecuting attorney, and the defendant or his counsel; but the court may instruct the jury on any point of law arising in the cause, which instruction shall be in writing, unless the prosecuting attorney and the defendant consent to its being given orally.

ARTICLE VII.

Of the verdict and judgment, and proceedings thereon.

§ 1. Jury to specify the degree of offence, when defendant found guilty.
2. Jury to ascertain the value of property stolen, &c.
3. Jury to assess the punishment.
4. When court shall assess the same.
5. When it may be increased by the court.
6. When diminished.
7. General powers in court to reduce punishment.
8. Power of the court to require security of the peace, &c., from convicts.
9. Limitation of the preceding section.
10. When recognizance to be deemed broken in such case.
11. Judgment of the court to be fully entered in minutes.
12. Authority of sheriff to execute sentence of imprisonment in county jail.
13. Authority of sheriff to convey convict to the penitentiary; how to be executed.
14. Authority of sheriff in requiring assistance in such cases; penalty on those refusing assistance.
15. Authority of sheriff to execute sentence of death; time for executing.
16. Court or governor may prolong or suspend execution of convict.
17. Jury to be summoned to try the insanity of convict, when; notice to prosecuting attorney to be given.
18. Prosecuting attorney to attend such inquiry.
§ 19. Inquest, by whom to be signed; if the convict be found to be insane, duty of the sheriff.
20. Inquisition to be transmitted to the governor; his power and duty in such cases.
21. Jury to ascertain pregnancy of female convict, to be summoned by sheriff; proceedings.
22. Duty of sheriff if such convict be found quick with child, &c.
23. When execution of such convict to be directed; sentence may be commuted.
24. Supreme court may issue habeas corpus, or a warrant for the apprehension of a convict, when sentence of death has not been executed, when.
25. Duty of court when such convict is brought before it.
26. Manner of executing convicts.
27. In misdemeanors, not to be discharged until sentence be complied with.
28. Such fine may be commuted by a term of imprisonment, and then discharged on payment of costs.
29. Person detained for costs in criminal cases may be discharged, how.
30. Property of a person charged with crime bound for the payment of fine and costs, and from what time.
31. Executions to be issued for fines and costs, when.

Jury to specify the degree of offence when defendant is found guilty.

SECTION 1. Upon the trial of any indictment for any offence, where by law there may be conviction of different degrees of such offence, the jury, if they convict the defendant, shall specify in their verdict of what degree of the offence they find the defendant guilty. (*l*)

Jury to ascertain the value of the property stolen, &c.

SEC. 2. Where the indictment charges an offence against the property of another by robbery, theft, fraud, embezzlement, or the like, the jury, on conviction, shall ascertain and declare in their verdict the value of the property taken, embezzled or received, and the amount restored, if any, and the value thereof; but their failure to do so shall in nowise affect the validity of their verdict.

Jury to assess the punishment.

SEC. 3. In all cases of a verdict of conviction for any offence, where by law there is any alternative or discretion in re-

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(*l*) See State vs. Shoemaker, 7 Missouri Rep., 180; McGee vs. the State, 8 Missouri Rep., 495; see also title crimes and punishments, section 14, article 9, and ante, sections 1 and 16, article 4.

gard to the kind or extent of punishment to be inflicted, the jury may assess and declare the punishment in their verdict, and the court shall render a judgment according to such verdict, except as hereinafter provided.

When court shall assess the same.

Sec. 4. Where the jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, or assess a punishment not authorized by law, and in all cases of judgment by confession, the court shall assess and declare the punishment, and render judgment accordingly. *(ll)*

When it may be increased by the court.

Sec. 5. If the jury assess a punishment, whether of imprisonment or fine, below the limit prescribed by law for the offence of which the defendant is convicted, the court shall pronounce sentence and render judgment according to the lowest limit prescribed by law in such case.

When diminished.

Sec. 6. If the jury assess a punishment, whether of imprisonment or fine, greater than the highest limit declared by law for the offence of which they convict the defendant, the court shall disregard the excess, and pronounce sentence and render judgment according to the highest limit prescribed by law in the particular case.

Power of court to reduce punishment.

Sec. 7. The court shall have power in all cases of conviction to reduce the extent or duration of the punishment assessed by a jury, if, in its opinion, the conviction is proper, but the punishment assessed is greater than under the circumstances of the case ought to be inflicted.

Power of court to require security of the peace, &c., from convicts.

Sec. 8. The court before which any person shall be convicted of any criminal offence, shall have power, in addition to the sentence prescribed or authorized by law, to require such person to give security to keep the peace or be of good behavior, or both, for a term not exceeding two years, or to stand committed until such security be given.

Limitation of the preceding section.

Sec. 9. The last section shall not extend to convictions for writing or publishing any libel, nor shall such security be hereafter required by any court upon any complaint, prosecution or conviction for any such writing or publishing.

When recognizance deemed to be broken.

Sec. 10. No recognizance given under the provisions of the eighth section shall be deemed to be broken, unless the principal therein be convicted of some offence, amounting, in judgment of law, to a breach of such recognizance.

Judgment of court to be fully entered in minutes.

Sec. 11. Whenever judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully on the minutes, stating briefly the offence for which

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(ll) See Foxe vs. the State, 7 Missouri Rep., 502.

such conviction shall have been had, and the court shall inspect such entries and conform them to the facts; but the omission of this duty, either by the clerk or judge, shall in nowise effect or impair the validity of the judgment.

Authority of sheriff to execute sentence of imprisonment in county jail.

Sec. 12. Whenever a sentence of imprisonment in a county jail shall be pronounced upon any person convicted of any offence, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county a transcript of the entry of such conviction, and of the sentence thereupon, duly certified by such clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

To convey convict to place of punishment; how to be executed.

Sec. 13. Where any convict shall be sentenced to any punishment, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by a general and usual deputy, cause such convict to receive the punishment to which he was sentenced.

Authority of sheriff requiring assistance in such cases.

Sec. 14. Such sheriff or deputy, while conveying a convict to the place of punishment, shall have the same power and like authority to require the assistance of any citizen of this territory in securing such convict, and re-taking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy, when required, shall be liable to the same penalties as for similar refusals in other cases.

Penalty on those refusing to assist.

Authority of sheriff to execute sentence of death; time of executing.

Sec. 15. Whenever any convict shall be sentenced to the punishment of death, the court shall cause to be made out, sealed and delivered to the sheriff of the county, a warrant stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four nor more than eight weeks from the time of the sentence.

Execution may be suspended, by whom.

Sec. 16. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time, or suspend the execution of any convict sentenced to the punishment of death; and no other court or officer shall have such authority, except in the cases and in the manner hereinafter provided.

Jury to inquire into insanity of convict when summoned

Sec. 17. If, after any convict be sentenced to the punishment of death, the sheriff shall have cause to believe that such convict has become insane, he may summon a jury of twelve competent jurors to inquire into such insanity, giving notice thereof to the prosecuting attorney.

Prosecuting attorney to attend such inquiry, &c

Proceedings.

Sec. 18. The prosecuting attorney shall attend such inquiry, and may produce witnesses before the jury, and may cause subpœnas to be issued by a justice of the peace for that purpose, and disobedience thereto may be punished by the district court in the same manner as in other like cases.

Inquisition by whom signed; if convict found insane, duty of sheriff.

Sec. 19. The inquisition of the jury shall be signed by them, and by the sheriff; if it be found that such convict is insane, the sheriff shall suspend the execution of the sentence until he receives a warrant from the governor, or from the supreme or district court, as hereinafter authorized, directing the execution of such convict.

Inquisition to be transmitted to the governor; his power and duty in such cases

Sec. 20. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such convict, issue a warrant appointing the time and place for the execution, pursuant to his sentence; or he may, in his discretion, commute the punishment.

Jury to ascertain pregnancy of female convict, to be summoned by the sheriff, &c.

Sec. 21. If, after any female convict shall be sentenced to the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall, in like manner, summon a jury of six persons, not less than three of whom shall be physicians, and shall give notice thereof to the prosecuting attorney, who shall attend, and the proceedings shall be had as provided in the nineteenth section of this article.

Proceedings.

Duty of sheriff if such convict be found quick with child, &c.

Sec. 22. The inquisition shall be signed by the jury and the sheriff, and, if it appear that such female convict is quick with child, the sheriff shall, in like manner, suspend the execution of her sentence, and transmit the inquisition to the governor.

When execution of such convict to be directed; sentence may be commuted.

Sec. 23. Whenever the governor shall be satisfied that the cause of such suspension no longer exists, he shall issue his warrant, appointing a day for the execution of such convict, pursuant to her sentence; or he may, at his discretion, commute her punishment.

Supreme court may issue habeas corpus, or a warrant for apprehension of convict, when sentence of death has not been executed, when.

Sec. 24. Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court, or the district court of the county in which the conviction was had, on the application of the prosecuting attorney, shall issue a writ of *habeas corpus* to bring such convict before the court; or, if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof.

Duty of court when such convict is brought before it; may issue a warrant for execution of sentence.

Sec. 25. Upon such convict being brought before the court, they shall proceed to inquire into the facts, and, if no legal reasons exist against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of such sentence, at such time as shall be appointed therein, which shall be obeyed by the sheriff accordingly.

Sec. 26. The punishment of death shall, in all cases, be inflicted by hanging the convict by the neck until he be dead.

Manner of executing convicts.

Sec. 27. Whenever any defendant shall, on a conviction, be sentenced to imprisonment in a county jail, or to pay a fine, he shall be imprisoned until the sentence is fully complied with and all costs paid, unless he be sooner discharged in the manner hereinafter provided.

Convicts not to be discharged from imprisonment in county jail unless, &c.

Sec. 28. When any person is held in custody or imprisonment for a fine imposed for a criminal offence, as specified in the last section, the court in which the cause was tried, or the judge thereof in vacation, on the petition of the prisoner for that purpose, shall sentence him to imprisonment for a limited time, in lieu of the fine, and, at the expiration of such time, the prisoner shall be discharged on the payment of costs, or obtaining his discharge in the manner in the next sections provided.

Fine may be commuted by a term of imprisonment, and then discharged on payment of costs.

Sec. 29. Whenever any person shall be detained for the costs of a criminal prosecution, he shall be permitted to take the benefit of the laws for the relief of insolvent debtors, on making application for that purpose, and conforming to the provisions of such laws.

Prisoner may be discharged under the insolvent laws, when.

Sec. 30. The property, real and personal, of any person charged with a criminal offence, shall be bound from the time of his arrest, or finding the indictment against him, (whichever shall first happen,) for the payment of all fines and costs which he may be adjudged to pay.

Property of accused bound from arrest, &c., for fine and costs.

Sec. 31. It shall be the duty of the clerk of the district court, at the end of each term, to issue executions for all fines imposed, and the costs of conviction in criminal cases, during the term, and remaining unpaid, which shall be executed in the same manner as executions in civil cases, and the property of the defendant may be seized and sold thereon, notwithstanding he may be in custody for the same demand.

Execution to be issued for fine and costs, when; how executed.

ARTICLE VIII.

Of appeals and writs of error in criminal cases.

§ 1. Appeals allowed to the supreme court in all cases of final judgment.

2. Writs of error upon such final judgment, are writs of right; when to issue.

3. When such appeal or writ of error to operate as a stay of proceedings.

4. If district court, or judge, refuse to make order for stay of proceedings, time shall be allowed to apply to supreme court.

§ 5. Order to stay proceedings by supreme court, &c., to be filed with the clerk; certificate of filing, &c.

6. How defendant to be kept, on writ or appeal being allowed.

7. When and how defendant may be let to bail.

§ 8. The condition of recognizance in such cases.
9. Appeal by the territory only in such cases as are enumerated in the next succeeding section.
10. Instances given when the territory may appeal.
11. When appeal granted, defendant to be committed or recognized.
12. When proceedings are stayed, clerk to make out full transcript of the record, and transmit it to supreme court.
13. When proceedings are not stayed, transcript to be made out and returned on application of appellant or plaintiff in error.
14. Recognizance to be filed and copy included in the transcript; but when taken by the supreme court, kept by the clerk thereof.
§ 15. As to forfeiture of such recognizance in supreme court.
16. On return of such appeal or writ of error to supreme court, how to proceed.
17. When defendant takes writ of error or appeal, and judgment of court below affirmed, sentence to be pronounced; when reversed, new trial granted or defendant discharged.
18. When territory appeals and judgment of court below is affirmed, or reversed, proceedings.
19. Proceedings against defendant not appearing at new trial, &c.
20. Cause remanded for new trial, proceedings.

Appeals allowed to supreme court.

SECTION 1. In all cases of final judgment, rendered upon any indictment, an appeal to the supreme court shall be allowed the defendant, if applied for during the term at which such judgment is rendered.

Writs of error, when to issue.

SEC. 2. Writs of error upon any such final judgment are writs of right, and, on application therefor, shall issue, of course, in vacation as well as in term, out of the court in which by law they may be made returnable.

When such appeal or writ of error to operate as a *supersedeas*.

SEC. 3. No such appeal or writ shall stay or delay the execution of such judgment or sentence, unless the supreme court, or district court, in which the judgment was rendered, or some judge of such supreme or district court, on inspection of the record, shall be of opinion that there is probable cause for such appeal or writ of error, or so much doubt as to render it expedient to take the judgment of the supreme court thereon; and shall make an order expressly directing that such appeal or writ of error shall operate as a stay of proceedings on the judgment.

If court or judge refuse the order to stay proceedings, time to be allowed to apply to supreme court.

SEC. 4. If the district court, or judge thereof, refuse such order, he shall, nevertheless, suspend the execution of the judgment, except as to fine and costs, if necessary, to allow sufficient time to make application to the supreme court, or a judge thereof, for such order.

Order to stay proceedings by supreme court, &c., to be filed where, &c.

SEC. 5. When any order to stay proceedings shall be made by the supreme court, or by any judge in vacation, the same, together with the writ of error, if any, shall be filed with the clerk of the court in which the judgment was rendered, who shall furnish the party filing the same with a certificate thereof, together with a copy of the order.

How defendant to be kept, on writ or appeal being allowed.

SEC. 6. If the defendant, in the judgment so ordered to be stayed, shall be in custody, it shall be the duty of the sheriff, if the order was made by the court rendering the judgment, or upon being served with the clerk's certificate and a copy of the order, to keep the defendant in custody, without executing the sentence which may have been passed, to abide such judgment as may be rendered upon the appeal or the writ of error.

When and how defendant may be let to bail.

SEC. 7. In all cases where an appeal, or writ of error, is prosecuted from a judgment in a criminal cause, (except where the defendant is under sentence of death, or imprisonment for life,) any court, or officer, authorized to order a stay of proceedings under the preceding provisions, may allow a writ of habeas corpus to bring up the defendant, and may thereupon let him to bail upon a recognizance, with sufficient securities, to be approved by such court or judge.

Condition of recognizance in such cases.

SEC. 8. The recognizance shall be conditioned that the defendant shall appear in the supreme court, at the next term thereof, to receive judgment on the appeal, or writ of error, and in the court in which the trial or indictment shall have been had, at such time and place as the supreme court shall direct; and that he will render himself in execution, and obey every order and judgment which shall be made in the premises.

Appeal allowed the territory in cases specified in next section.

SEC. 9. The territory, in any criminal prosecution, shall be allowed an appeal only in the cases and under the circumstances mentioned in the next succeeding section.

Instances given when the territory may appeal.

SEC. 10. When any indictment is quashed, or adjudged insufficient upon demurrer, or judgment is arrested, the district court, either from its own knowledge, or from information given by the prosecuting attorney, may cause the defendant to be committed, or recognized, to answer another indictment; or, if the prosecuting attorney prays an appeal to the supreme court, the district court may, in its discretion, grant an appeal.

When appeal granted, defendant may be committed or recognized.

SEC. 11. If an appeal be granted, the district court shall order the defendant to be committed or recognized, and the recognizance shall be to the same effect as the recognizance required when the defendant himself is appellant; and the party, if committed, shall be held in custody, until the judgment of the supreme court shall have been passed on the case, to abide such judgment.

Clerk to make out and transmit transcript to supreme court, when.

SEC. 12. When any appeal shall be taken, or writ of error filed, which shall operate as a stay of proceedings, it shall be the duty of the clerk of the district court to make out a full transcript of the record in the cause, including the bill of exceptions, judgment and sentence, and certify and return the same to the office of the clerk of the supreme court, without delay.

To be made out and returned on application of appellant, when.

SEC. 13. When the appeal, or writ of error, does not operate as a stay of proceedings, such transcript shall be made out, certified and returned, on the application of the appellant or plaintiff in error, as in civil cases.

Recognizance to be filed and copy included in transcript, when.

SEC. 14. The recognizance authorized by this article, if taken by the court or judge before whom the cause was tried, shall be filed with the clerk, and a transcript thereof transmitted, with the record, to the supreme court; if taken by the supreme court, or any judge thereof, the clerk of the supreme court shall certify a transcript of the same to the court in which the cause was tried, and such court shall proceed thereon as on a recognizance taken in that court.

Duty of clerk, if taken by supreme court.

Forfeiture of such recognizance in the supreme court.

SEC. 15. If the forfeiture of the recognizance is taken in the supreme court, the same shall be certified back to the district court; and the supreme court in such case, and in case the defendant breaks jail, shall proceed to determine the cause, and issue a capias if necessary.

On return of such appeal or writ of error to the supreme court, how to proceed.

SEC. 16. No assignment of error, or joinder in error, shall be necessary upon any appeal or writ of error, in a criminal case, issued or taken pursuant to the foregoing provisions of this article; but the court shall proceed, upon the return thereof, without delay, and render judgment upon the record before them.

If judgment be affirmed, sentence to be pronounced.

SEC. 17. Where the appeal is taken, or the writ of error is sued out by the party indicted, if the supreme court affirm the judgment of the district court, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly: if the judgment be reversed, the supreme court shall direct a new trial, or that the defendant be absolutely discharged, according to the circumstances of the case.

If reversed, new trial granted, or defendant discharged.

Proceedings on affirmance or reversal, when the territory appeals.

SEC. 18. Where the appeal has been taken by the territory, if the judgment of the district court be affirmed, the party shall be discharged; if reversed, the supreme court shall direct the district court to enter up judgment upon the verdict rendered, or, where no verdict has been rendered, to proceed to trial on the indictment.

Proceedings against defendant not appearing at new trial, &c.

SEC. 19. If the defendant shall have been let to bail, after the appeal or writ of error, as herein provided, and shall fail to appear and receive judgment on such appeal or writ of error, or at any new trial that may have been ordered, the supreme court or the court in which such new trial shall be directed, or any judge of either court, shall cause such defendant to be arrested, upon process to be issued for that purpose.

Cause remanded for new trial, proceedings.

SEC. 20. The district court, to which any criminal cause shall be remanded for a new trial, shall proceed therein in the same manner as if such cause had not been removed into the supreme court.

ARTICLE IX.

Miscellaneous provisions.

§ 1. Search warrants, by whom and when to be issued.
2. To be directed to sheriff or constable; command of warrant.
3. Warrant may order the search of a particular place or house, in the night time, when.
4. By whom executed.
5. Committing magistrates authorized to search vagrants and persons accused.
6. Property alleged to be stolen, in possession of officer, to remain in his hands, subject to order, &c.
7. Magistrate may order its delivery to owner, when and on what terms.
8. Such property in custody of magistrate may be delivered to owner, when.
9. Court before which conviction is had, may order such property to be delivered to owner, when.
10. When no owner appears, may be sold.
11. Perishable property to be sold.
12. Property must be described so it can be identified.
13. Warrants need not be sealed.
14. Recognizances, their form, &c.
§ 15. Authority of officers to convey prisoners from one county to another.
16. Officer, or person, having prisoner, not liable to arrest on civil process; may summon *posse comitatus*, &c.
17. Jailor of any county through which he passes, required to receive the prisoner.
18. Mode of securing fugitives from justice.
19. Expenses, how paid.
20. Governor authorized to offer reward for fugitives.
21. Proceedings in such cases.
22. Governor's pardon may be conditional.
23. No limitation to prosecutions for capital offences.
24. Limitation to prosecutions for other felonies.
25. Limitation to prosecutions for misdemeanors.
26. When party flees from justice, the time he is absent not to be computed.
27. If indictment is quashed, &c., the time the prosecution was pending not to be computed.

Search warrants, by whom and when to be issued.

SECTION 1. Upon complaint being made, on oath, to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complainant suspects that such property is concealed in any particular house or place, if such magistrate shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

To be directed to the sheriff or constable.

Command of warrant.

SEC. 2. Such warrant shall be directed to the sheriff of the county, or any constable of the township, and shall command him to search the place where such property is suspected to be concealed, in the day time, which place shall be designated, and the property particularly described in such warrant, and to bring such property before the magistrate issuing the warrant.

Warrant may order the search of a place or house in the night time, when.

SEC. 3. If there be positive proof that any property, stolen or embezzled, is concealed in any particular place or house, the warrant may order the searching of such place or house in the night time.

By whom only executed.

SEC. 4. Every such warrant shall be executed by a public officer, and not by any other person.

Committing magistrates authorized to search vagrants and persons accused.

SEC. 5. Any magistrate who shall commit any person, charged with an offence, to jail, or by whom any vagrant or disorderly person shall be committed, may cause such person to be searched, for the purpose of discovering any money or property he may have; and if any be found, the same may be taken and applied to the support of such person while in confinement.

Property alleged to be stolen, in possession of officer, to remain in his hands, subject to order, &c.

SEC. 6. When property alleged to have been stolen shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officers, he shall hold the same subject to the order of the officer authorized to direct the disposition thereof.

Magistrate may order its delivery to owner, when and on what terms.

SEC. 7. Upon receiving satisfactory proof of the title of any owner of such property, the magistrate, who shall take the examination of the person accused of any of the offences referred to in the preceding section, may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

Such property in custody of magistrate may be delivered to owner, when.

SEC. 8. If such property come into the custody of a justice of the peace or other magistrate, upon satisfactory proof of the title of any owner thereof, it shall be delivered to him on the payment of the necessary expenses incurred in the preservation thereof, to be certified by such magistrate.

Court before which conviction is had, may order such property to be delivered to owner, when.

SEC. 9. If such property shall not have been delivered to the owner thereof, the court before which a conviction shall be had for the stealing, embezzling, or obtaining such property, in any of the modes referred to in the sixth section of this article, may, on proof of the ownership of any person, order the same to be restored to him, on payment of the expenses incurred in the preservation thereof.

When no owner appears, may be sold.

SEC. 10. If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it, in any of the modes referred to in the sixth section of this article, the court or magistrate, authorized by the preceding provisions to order a restoration, may order the same to be sold, and the proceeds of the sale, after payment of the expenses of the preservation and sale of the property, shall be paid into the county treasury for the use of the county.

Perishable property to be sold.

SEC. 11. If the property thus obtained be a living animal, or of a perishable nature, the court or magistrate authorized to order a restoration, may order a sale thereof, and the proceeds shall be applied in the same manner as hereinbefore directed in respect to such property.

Property must be described so it can be identified.

SEC. 12. In all cases of sale, as specified in the last section, a particular description of the property shall be made out, in writing, and filed with the court or officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds within the time limited by law for making his claim.

Warrants need not be sealed.

SEC. 13. Warrants authorized by law to be issued in criminal cases, may be under the hand of the magistrate issuing the same, and shall be as valid and effectual in all respects as if sealed.

Recognizances, their form.

SEC. 14. All recognizances required or authorized to be taken in any criminal proceeding, in open court, by any court of record, shall be entered on the minutes of such court, and the substance thereof shall be read to the person recognized; all other recognizances in any criminal matter or proceeding, or in any proceeding of a similar nature, shall be in writing, and shall be subscribed by the parties to be bound thereby.

Authority of officers to convey prisoners from one county to another.

SEC. 15. Every officer or other person, who shall have arrested, or have in his custody, under the authority of the laws of this territory, any prisoner who is to be conveyed from one county to another, may carry such prisoner through such parts of any county as shall be in the ordinary route of travel, from the place where such prisoner shall have been arrested, to the place where he is to be conveyed and delivered, under the process or authority by which such prisoner shall have been arrested or is detained.

Officer or person having prisoner, not liable to arrest on civil process; may summon *posse comitatus*, &c.

SEC. 16. The officer or person having such prisoner in charge shall not be liable to arrest, on civil process, while on his route; and he shall have the like power to require any person to aid in securing such prisoner, and re-taking him, if he escape, as sheriffs or other officers have in their own county; and a refusal or neglect to render such aid, shall be an offence punishable in the same manner as for disobedience to a summons to assist in the execution of process.

Jailors of counties through which he passes, required to receive prisoner.

SEC. 17. The jailor of every county through which such prisoner may be taken, is required to receive and safely keep such prisoner in the jail of which he has charge, when thereto requested by the officer or person having lawful charge of such prisoner, and to re-deliver him on demand of such officer or person.

Mode of securing fugitives from justice.

SEC. 18. Whenever the governor of this territory shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the territory, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offence was committed, or is by law cognizable.

Expenses, how paid.

SEC. 19. The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the territorial treasury, as other demands against the territory.

Governor authorized to offer reward for fugitives.

SEC. 20. If any person charged with, or convicted of, a felony, shall break prison, escape or flee from justice, and abscond or secrete himself, the governor of this territory may, if he deem it expedient, offer any reward, not exceeding three hundred dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer, as he may direct.

Proceedings in such cases.

SEC. 21. When any person shall apprehend and deliver such fugitive to the proper sheriff or officer, he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the auditor of public accounts.

Governor's pardon may be conditional.

SEC. 22. In all cases in which the governor is authorized by the constitution to grant pardons, he may grant the same with such conditions and under such restrictions as he may think proper.

No limitation to prosecutions for capital offences.

SEC. 23. Any person may be prosecuted, tried and punished for any offence punishable with death at any time after the offence shall be committed.

Limitation to prosecutions for other felonies.

SEC. 24. No person shall be tried, prosecuted or punished for any felony (other than as specified in the last section) unless an indictment for such offence be found within three years after the commission of the offence.

Limitation to prosecutions for misdemeanors.

SEC. 25. No person shall be prosecuted, tried or punished for any offence (other than felony,) or for any fine or forfeiture, unless the indictment be found on a prosecution instituted within one year after the commission of the offence, or incurring the fine or forfeiture.

When party flees from justice, absent time not to be computed.

SEC. 26. Nothing contained in the two preceding sections shall avail any person who shall flee from justice; and, in all cases, the time during which any defendant shall not have been an inhabitant of, or usually resident within, this territory shall not constitute any part of the limitation prescribed in the preceding sections.

Further exceptions.

SEC. 27. Where any indictment or prosecution shall be quashed, set aside or reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offence. (*n*)

(*n*) See State vs. English, 2 Missouri Rep., 182.

ARTICLE X.

Of the custody and management of the estates of convicts.

§ 1. Convicts for life *civilitis mortuus*, their estate administered accordingly.
2. Convicts for terms of years, their estate confided by the court of chancery to a trustee.
3. When appointed.
4. Trustee to take oath and give bond.
5. Trustee under the superintending control of the court.
6. Convict's estate vested in the trustee.
7. Powers and duties of the trustee.
8. What he may do under the direction of the court.
9. Further powers.
10. Further powers to be exercised under the direction of court.
11. Trustee to give notice; its contents.
12. How published.
13. Such notice not to affect his right of action.
14. Trustee authorized to submit matters in dispute to referees.

§ 15. How appointed; their powers, and duties, and compensation.
16. Duties of the trustee.
17. To make annual report; the court to declare annual dividends.
18. Creditors whose claims are not yet due, to receive their share on certain terms.
19. Set-offs allowed, when.
20. Sufficient money to be reserved to meet contingent demands.
21. Notice of dividends, when and how published.
22. For what purposes effects may, under the direction of the court, be applied.
23. Upon the discharge of the convict, his effects to be delivered up.
24. In case of his death, the same order, &c.
25. Court authorized to enforce such order in a summary way.
26. Compensation of trustee.

SECTION 1. Whenever any person shall be imprisoned under a sentence of imprisonment for life, his estate, property and effects shall be administered and disposed of, in all respects, as if he were naturally dead.

Convicts for life *civilitis mortuus;* estates how disposed of.

SEC. 2. Whenever any person shall be imprisoned in the penitentiary for a term less than his natural life, a trustee, to take charge of and manage his estate, may be appointed by the probate court of the county in which such convict last resided; or, if he have no known place of abode, then by the court of the county in which the conviction was had, on the application of any of his relatives, or any relative of his wife, or any creditor.

Convicts for terms of years, their estates confided by the court of chancery to a trustee.

SEC. 3. Upon producing a copy of the sentence duly certified, and satisfactory evidence that such convict is actually imprisoned under such sentence, the court to which the application is made may immediately appoint a fit person to be trustee of the estate of such convict.

When appointed.

SEC. 4. Every such trustee, before entering upon the duties of his office, shall take an oath faithfully to discharge the duties thereof, and give bond in such sum and with such security as the court shall approve, conditioned that he will manage and administer the estate and effects committed to his charge to the best advantage, according to law, and will faithfully do and perform all such other acts, matters and things touching his trust as may be

Trustee to take oath and give bond.

prescribed by law, or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

Trustee under the superintending control of the court.

SEC. 5. The court appointing such trustee shall have a superintending control over him, and may, at any time, compel him to account, may remove him from his trust for misconduct, and may appoint another person in his stead whenever it may become necessary.

Convict's estate vested in trustee.

SEC. 6. Upon taking the oath and filing the bond required by this act, all the estate, property, rights in action and effects of such imprisoned convict shall be vested in such trustee, in trust, for the benefit of creditors and others interested therein.

Powers and duties of the trustee.

SEC. 7. Such trustee may sue for and recover, in his own name, any of the estate, property or effects belonging to, and all debts and sums of money due, or to become due, to such imprisoned convict, and may prosecute and defend all actions commenced by or against such convict.

What he may do under the direction of the court.

SEC. 8. The probate court appointing any such trustee may, at any time, order the sale, lease or mortgage of real estate, the hiring or sale of slaves whenever the same shall be necessary for the payment of debts, or the support and maintenance of the family, or the education of the children of such convict, and in every such order shall direct the manner and terms of sale or other dispositions to be made.

Further powers.

SEC. 9. The trustee shall settle matters and accounts between such imprisoned convict and his creditors, and may examine witnesses, touching such matters and accounts, upon oath, to be administered by him; he may, under the direction of the court, compound with any person indebted to such imprisoned convict, and, thereupon, discharge all demands against such person.

Further powers to be exercised under the direction of the court.

SEC. 10. Such trustee may, also, under the direction of the court, redeem all mortgages and conditional contracts, and all pledges of personal property, and satisfy judgments and decrees which may be an incumbrance on any property ordered to be sold, or he may sell such property subject to such mortgages, pledges or incumbrances, as the court shall direct.

Trustee to give notice; its contents.

SEC. 11. The trustee, immediately upon his appointment, shall give notice thereof, and therein shall require, *first*, all persons indebted to such imprisoned convict, by a day and at a place therein to be specified, to render an account of all debts and sums of money by them owing respectively to such trustee, and to pay the same; *second*, all persons having in their possession any property and effects of such convict, to deliver the same to the trustee so appointed; *third*, all creditors of such convict to deliver their respective accounts and demands to the trustee by a day to be therein specified, not less than two months from the publication of such notice.

Where and how published.

SEC. 12. Such notice shall be published for at least three weeks in some newspaper printed in or nearest to the county in which the appointment was made.

Such notice not to affect his right of action.

SEC. 13. Notwithstanding such notice, the trustee may sue for and recover any property or effects of the convict, and any debts due to him, at any time before the day appointed for the delivery or payment thereof.

Trustee authorized to submit matters in dispute to referees.

SEC. 14. If any controversy shall arise between the trustee and any other person in the settlement of any demands against such convict, or of debts due to his estate, the same may be referred to three disinterested persons, who may be agreed upon by a writing to that effect, signed by the trustee and the other party.

How appointed, their powers and duties and compensation.

SEC. 15. If such referees be not selected by agreement, they may be appointed by the court on the application of either party, due notice of the application being given to the other, and such referees shall have the same powers and shall be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the district court in personal actions pending therein.

Duties of the trustee.

SEC. 16. The trustee shall, as speedily as possible, convert into money so much of the estate, real and personal, as shall be necessary for the purposes of the trust; he shall keep regular accounts of all money received, and other matters touching his trust, to which creditors and others interested shall be at liberty, at reasonable times, to have recourse.

To make annual report; the court to declare annual dividends.

SEC. 17. The trustee shall, annually, at such term as the court shall direct, make a full report of his proceedings to the court and a full statement of his accounts, and the court shall thereupon declare the dividends to be made among the creditors.

Creditors whose claims are not yet due, may receive their share on conditions.

SEC. 18. Every person to whom such convict shall be indebted for a valuable consideration, for a sum of money not due but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum to be distributed for the time unexpired of such credit.

Set-off allowed, when.

SEC. 19. Where there are mutual credits between the convict and any other person, they may be set-off against each other, but no set-off shall be allowed of any claim or debt which shall have been purchased by, or transferred to, the person claiming its allowance, after the conviction of the debtor.

Money to be reserved to meet contingent demands.

SEC. 20. If, at the time a dividend is made, a suit is pending to establish any demand, the proportion which would be allotted to such demand, if established, shall be reserved, with the necessary costs and expenses, to be applied according to the event of such suit.

Notice of dividends, when and how published.

Sec. 21. When any dividend shall be ordered by the court, the trustee shall immediately cause a notice thereof to be published, as before directed in relation to notices of their appointment, and shall make payments according to the order of the court.

For what purposes effects may, under the direction of the court, be applied.

Sec. 22. The court shall have power, from time to time, to make and cause the trustee to execute orders for the application of any portion of the proceeds of estates in their hands, for the support and maintenance of the family of such convict, and the education of his children, and to set apart and reserve to the use of such family any property, real or personal, when it may be done without prejudice to the rights of creditors.

Upon the discharge of the convict, his effects to be delivered up.

Sec. 23. When any such imprisoned convict shall be lawfully discharged from his imprisonment, the trustee, so appointed, shall deliver up to him all his estate, real and personal, and all money belonging to him remaining in his hands, after deducting a sufficient sum to satisfy expenses which have been incurred in the execution of his trust and his lawful commission.

In case of his death, how to account.

Sec. 24. In case of the death of such convict, the trustee shall, in like manner, account with the personal representatives, and deliver to them the property and effects remaining.

Authority of court to enforce the order.

Sec. 25. The transfer and settlement required to be made by either of the two preceding sections, may be enforced by the court in a summary manner, on the application of the party interested.

Compensation of trustee.

Sec. 26. The trustee shall be allowed, as a full compensation for his services, a commission at the rate of five per cent. on the whole sum which shall have come into his hands by virtue of his trust.

This act to take effect and be in force from and after its passage.

CHAPTER 130.

PRACTICE IN THE SUPREME COURT.

An act regulating practice in the supreme court.

§ 1. When writs of error to issue out of supreme court.
2. Writs of error, when and in what cases to issue from district court to probate court.
3. All writs of error, when and in what time to be brought.
4. Several defendants, and one or more of them die, writ may be brought by the survivor.
5. All living shall join in the writ of error, except otherwise allowed by the supreme court.
6. What plaintiff in error may answer to allegations, that there are other persons living who ought to join.
7. Further answer to such allegations, by proof on affidavit. Proceedings thereon.
8. Persons refusing to join, order to be made on the record to appear, &c.; proceedings in such case.
9. Copy of such order to be served on the party refusing; when and how.
10. On the application of person named in such order, he may be permitted to join in the writ, when.
11. Person named in such order, and served with the same, not appearing, proceedings.
12. Persons out of the territory, not joining in such writ, their rights not impaired.
13. Persons who ought to join in a writ of error, may be permitted to do so; when, and proceedings.
14. In what cases, and when execution to be stayed by writ of error.
15. In what cases, and when order to be made by court or judge to stay execution on writ of error.
16. Order to stay execution to be endorsed on the writ; when.
17. If no execution has issued, or, if issued, not fully executed, how to proceed to stay execution.
18. Notice of writ of error to be served on adverse party; effect of failure.

§ 19. Writs of error and return thereto, how made.
20. Penalty on clerk for failing to make return of writ.
21. Appeals, when and to what court returnable; transcript, when to be filed; on failure, proceedings.
22. In what manner the clerk is to docket all cases, and give notice in a newspaper.
23. When errors to be assigned; on failure, judgment affirmed.
24. Joinder in error, when to be filed.
25. Proceedings when one or more of plaintiffs or defendants die before joinder in error.
26. Proceedings when one or more of plaintiffs or defendants die after joinder in error.
27. If all the plaintiffs die after appeal or writ of error, and before judgment, proceedings.
28. If all the defendants die after appeal or writ of error, and before judgment, proceedings.
29. Husband may be joined with his wife as plaintiff after appeal or writ of error, when and how.
30. Husband may be made co-defendant with his wife before judgment, how.
31. Statement of case and points to be made out and delivered to the judges.
32. Exceptions not to be taken on points not decided by district court.
33. Proceedings of the court on appeal or writ of error, or upon a special verdict.
34. Upon affirmance of judgment, damages may be awarded.
35. Court divided in opinion, judgment of district court affirmed.
36. Judgments of the supreme court may be carried into effect, by execution, or the record may be remitted, with their decision, to the district court.
37. Foregoing provisions to extend to appeals from decrees and decisions in chancery.
38. Construction.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When writs of error to issue out of the supreme court.

SECTION 1. Writs of error upon any final judgment or decision, of any district court, in all cases, are writs of right, and shall issue, of course, out of the supreme court, in vacation as well as in term, subject to the regulations prescribed by law.

Writs of error, when and what cases to issue from district to probate court.

Sec. 2. Writs of error shall issue on demand, as a matter of right, on the final decision or judgment of the probate court, from the district court, in term time or vacation, except in relation to probate matters, within ninety days from such judgment or decision.

All writs of error, when and in what time to be brought.

Sec. 3. All writs of error upon any judgment or decision of any court, in any case, whether civil or criminal, shall be brought within five years after the rendering of such judgment or decision, and not thereafter.

Writ may be brought by survivor, when.

Sec. 4. If a judgment shall be rendered against several persons, and one or more of them die, a writ of error may be brought thereon by the survivors.

All living shall join in a writ of error, except otherwise ordered by the supreme court.

Sec. 5. If there be several persons, against whom any judgment shall have been recovered, and entitled to bring a writ of error thereon, living at the time of bringing such writ, they shall all join in such writ, except where it is otherwise provided by law; and if any are omitted the writ shall be quashed, on motion of the defendant in error, made at any time before joinder in error, upon due proof of the facts, by affidavit, unless one or more of such persons be allowed to proceed by the supreme court.

What plaintiff in error may answer to allegations that there are other persons living who ought to join.

Sec. 6. To the allegations of there being other persons living who ought to join in such writ of error, if it be established or admitted, the party prosecuting such writ may answer, by due proof, on affidavit, that any of such persons not joined are either incapable of consenting to join in such writ by reason of insanity or imbecility of mind, or that their consent could not be obtained by reason of their being absent out of this territory; and if the court shall be satisfied of the truth of such answer, such party shall be allowed to prosecute such writ without joining such person, in the same manner as if they were joined.

Further answer to such allegations by proof on affidavit.

Proceedings thereon.

Sec. 7. To such allegation, the party prosecuting the writ may also answer, by due proof, on affidavit, that application has been made to any of the persons, not named in such writ, to join therein, and that they have refused; in such case, the court shall stay further proceedings on such writ, and on the motion to quash the same, until an order shall have been duly served upon the person so refusing, as hereinafter provided.

Court to cause an order to be entered of record that the person refusing to join, appear, when and where.

Sec. 8. The court shall, thereupon, cause an order to be entered on its record, directing the persons so refusing to join in such writ to appear in such court within such time as shall be prescribed therein, and there join in such writ of error and in the proceedings thereon, or to be forever precluded from bringing another writ of error on the same judgment.

SEC. 9. A copy of such order shall be served on the parties named therein, at least ten days previous to the time of appearance therein specified, in like manner as an original writ of summons.

A copy of the order to be served, when and how.

SEC. 10. Upon the application of any person named in such order, he may be permitted to join in such writ of error, and in the proceedings thereon, upon the payment of the costs of the proceedings to bring him into court, including the motion to quash the writ of error, if it shall appear that he refused to join in such writ on application and without just cause, and the writ and proceedings shall be amended by inserting the name of such person.

On application person named in the order may be permitted to join in the writ, when.

SEC. 11. If any person, named in such order, do not appear by the time therein specified, and join in such writ of error, upon due proof of the service of such order, the default of such person shall be entered, and he shall thereby be forever precluded from bringing any writ of error on the same judgment, and the cause shall proceed in the same manner as if such person had been named in such writ and in the proceedings thereon.

If he do not appear, proceedings.

SEC. 12. When the name of any person out of this territory, or incapable of giving consent to the bringing of a writ of error, shall be omitted in such writ, and the cause shall proceed without such name, the rights of such person shall not be impaired by the judgment on such writ, but he may bring his writ of error in the same manner, separately, as if no such former writ had been brought.

Person out of the territory not joining in such writ, his right not impaired.

SEC. 13. Any person who ought to join in a writ of error, may be permitted to do so, on his application, on such terms as the court shall impose, and the writ and proceedings shall be amended by inserting his name, and shall proceed as in other cases.

Persons who ought to join in such writ may be permitted to do so, when and proceedings.

SEC. 14. No writ of error shall stay execution, unless the supreme court, or some judge thereof in vacation, be satisfied, upon an inspection of a copy of the record, that there is error therein, and shall make an order allowing such writ of error to stay the execution; and no such order shall be made by a judge in vacation, after the expiration of ninety days from the rendering of the judgment or decision complained of.

In what cases, and when execution to be stayed by writ of error.

SEC. 15. No order allowing a writ of error to stay the execution shall be made by the supreme court, or by any judge thereof in vacation, except in the following cases: *First*, where the plaintiff in error was executor or administrator in the original action, and such action was by or against him, as such; *second*, where the plaintiff in error, or some responsible person for him, together with two sufficient sureties, to be approved by the court or judge, or by the judge of the district court in which the judgment

In what cases, and when order to be made by court or judge to stay execution on writ of error.

was rendered, shall enter into a recognizance, before such court or judge, to the adverse party, in a penalty sufficient to secure whatever debt, damages and costs have been recovered by the judgment complained of, together with the costs and damages that may be recovered in the supreme court, conditioned that the plaintiff in error will prosecute such with effect, and pay the money that shall therein be adjudged against him by the supreme court, or otherwise abide the judgment of such court therein.

Order to be endorsed on the writ, when, &c.

SEC. 16. The court or officer allowing a writ of error to stay the execution, shall cause an order to that effect to be endorsed upon the writ, under the hand of the judge, when the same is made in vacation, and under the hand of the clerk of the court when the same is made in term.

If no execution has issued, or if issued, not fully executed, how to proceed to stay execution.

SEC. 17. If no execution be issued, the exhibition of such writ of error, so endorsed, to the adverse party or his attorney of record, or the clerk of the district court where the judgment or decision complained of was rendered, shall stay the issuing of any writ of execution. If any execution shall have been issued and not fully executed, upon the exhibition of such writ of error to the officer charged with the execution of the writ of execution, such officer shall proceed no further in the execution thereof, but shall return the writ, together with the reason of his not proceeding to the final execution thereof.

Notice of writ of error to be served on adverse party; effect of failure.

SEC. 18. Every person suing out a writ of error shall cause a notice thereof, in writing, to be served on the adverse party or his attorney of record, ten days before the return day of such writ: if such notice be not served, the writ shall be dismissed, unless good cause for such failure be shown.

Writs of error, how returned.

SEC. 19. Writs of error shall be returned, signed by the clerk of the court to which such writ shall be addressed, under the seal thereof.

Penalty on clerk for failing to make return of writ.

SEC. 20. Any clerk failing to make return of any writ to the supreme court, shall be liable to be punished by such court, on attachment, for his contempt, in the same manner as officers of other courts for disobeying the process or orders of such courts.

Appeals when and to what court returnable; transcript, when to be filed; on failure, proceedings.

SEC. 21. All appeals taken thirty days before the first day of the next term of the supreme court, shall be returnable in such next term; and all appeals taken in less than thirty days before the first day of such next term, shall be returnable in the second term thereafter. The appellant shall cause to be filed in the office of the clerk of the supreme court, at least ten days before the term of such court to which the appeal is returnable, a perfect transcript of the record and proceedings in the cause; if he fail so to do, and the appellee produce in court such transcript, and it appear thereby that an appeal has been allowed in the cause, the court shall affirm the judgment, unless good cause to the contrary be shown.

SEC. 22. It shall be the duty of the clerk to docket all causes from the same judicial district, in succession, in the order of the districts, setting not more than five causes for each day, and a copy of the docket shall be printed in some newspaper at least ten days before the commencement of the term.

In what manner the clerk is to docket all cases and give notice in a newspaper.

SEC. 23. On appeals and writs of error, the appellant and plaintiff in error shall assign errors on or before the first day on which causes from the same district are set for hearing; in default of such assignment of errors, the appeal or writ of error may be dismissed, or the judgment affirmed, unless good cause for such failure be shown.

When errors to be assigned; on failure, judgment to be affirmed.

SEC. 24. Joinders in error shall be filed within four days after the filing of the assignment of error.

Joinder in error, when to be filed.

SEC. 25. If there be several appellants or plaintiffs in error, and one or more of them die before errors are assigned, such death shall be sugested by the surviving plaintiffs, and the errors shall be assigned by them; and if one or more of several defendants die before joinder in error, such death shall in like manner be suggested by the survivor, and they shall plead to the assignment of errors.

Proceedings when one or more plaintiffs or defendants die before joinder in error.

SEC. 26. If there be several appellants or plaintiffs in error, and one or more of them die, after errors assigned, or if there be several appellees or defendants in error, one or more of whom shall die after errors assigned, the appeal or writ of error shall not thereby abate, but in either of such cases such death shall be suggested on the record, and the cause shall proceed at the suit of the surviving appellant or plaintiff in error, or against the surviving appellee or defendant in error, as the case may be.

Proceedings when one or more plaintiffs or defendants die after joinder in error.

SEC. 27. If all the appellants or plaintiffs in error die after the appeal taken or writ of error brought, and before judgment rendered thereon, the executors, or administrators of the last surviving plaintiff or appellant, or the heirs and devisees of the plaintiff or appellant, in cases where they would be entitled to bring writs of error, may be substituted for such plaintiffs, and the cause shall proceed at their suit.

If all the plaintiffs die after appeal or writ of error, and before judgment, proceedings.

SEC. 28. If all the appellees or a sole appellee, or if all the defendants or a sole defendant, in a writ of error die after the appeal taken, or writ of error brought, and before judgment therein, the executors and administrators, or heirs and devisees of such appellees or defendants, may be compelled to become parties, and join in error, in like manner, as in an original suit.

If all the defendants die after appeal or writ of error and before judgment, proceedings

Husband may be joined with his wife as plaintiff after appeal or writ of error.

SEC. 29. If a female appellant, or plaintiff in error, marry after the appeal taken, or writ of error brought, her husband may be joined with her, on his application, and his name shall thereupon be entered in the proceedings.

May be made co-defendant with his wife before judgment, how.

SEC. 30. If a female appellee, or defendant in error, marry after the appeal taken, or writ brought, and before judgment, her husband may be made a co-defendant, on his application, or the application of the adverse party.

Statement of case, &c., to be made out, &c.

SEC. 31. On appeals and writs of error, each party shall, before the argument of the cause, make out and furnish the court with a clear and concise statement of the case, and the points intended to be insisted on in argument.

Exceptions not to be taken on points not decided by district court.

SEC. 32. No exception shall be taken in an appeal, or writ of error, to any proceedings in the district court, except such as shall have been expressly decided by such court.

Proceedings of the court on appeal or writ of error, or upon a special verdict.

SEC. 33. The supreme court, in appeals, or writs of error, shall examine the record and award a new trial, reverse or affirm the judgment or decision of the district court, or give such judgment as such court ought to have given, as to them shall seem agreeable to law: when the facts, in a special verdict, are insufficiently found, they may remand the cause, and order another trial to ascertain the facts.

Upon affirmance of judgment, damages may be awarded.

SEC. 34. Upon the affirmance of any judgment or decision, the supreme court may award to the appellee, or defendant in error, such damages, not exceeding ten per cent. on the amount of the judgment complained of, as may be just.

Court divided in opinion, judgment affirmed.

SEC. 35. When the supreme court shall be divided in opinion, the judgment or decision of the district court shall be affirmed.

Judgments of the court, how carried into effect.

SEC. 36. The supreme court, upon the determination of any cause in appeal, or error, may award execution to carry the same into effect, or may remit the record, with their decision thereon, to the district court from whence the cause came, and such determination shall be carried into execution by such district court.

Foregoing provisions to extend to decrees and decisions in chancery.

SEC. 37. The foregoing provisions, relative to appeals and the parties thereto, shall be construed to extend to appeals from the decrees and decisions, in chancery causes, in all respects the same as to appeals from judgments and decisions in suits at law.

Construction.

SEC. 38. All the provisions of this act shall be construed to apply to appeals or writs of error from any court, from which appeals or writs of error may lie to the supreme court under any law of this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 131.

PRE-EMPTION.

An act to grant pre-emption to school lands in certain cases.

§ 1. Of pre-emption to land in certain cases.
2. May enter by paying two dollars and fifty cents per acre.
3. Trustees to be selected.
4. May enter 160 acres, when; proviso.
§ 5. Right to pre-emption transferable.
6. Payment to be made, when.
7. Title to vest in person making payment.
8. Powers of county tribunal.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Of pre-emption to land in certain cases.

SECTION 1. Wherever any town shall have been laid out, or any person over twenty-one years of age and the head of a family shall have erected and occupied a dwelling on any portion of either of the sections numbered sixteen and thirty-six in any township in this territory, before any of the lines of such section shall have been surveyed, the persons who may have laid out such town and their assignees, and the person who may have erected and occupied such dwelling, as the case may be, shall be entitled to a pre-emption to such land, and to hold the same until the time hereinafter provided for the entry of the same shall have expired.

May enter by paying two dollars and fifty cents per acre.

SEC. 2. If a town have been laid out as above specified, the persons laying out such town, or their assignees, may enter the land so laid out by paying for the same at the rate of two dollars and fifty cents per acre. Should the outboundaries of such town not include the whole of any quarter section, the whole of such quarter section may be entered as above provided.

Trustees to be selected.

SEC. 3. Such proprietors, or their asignees, may select one or more trustees and enter such land in the name of such trustee, for the use and benefit of such proprietors and their assignees.

May enter 160 acres.

SEC. 4. The person who may have erected and occupied a dwelling on such lands as above specified, may enter one hundred and sixty acres by paying for the same at the rate of one dollar and twenty-five cents per acre; *provided, however*, that only the quarter section on which suchd welling is situate shall be entered, unless such person shall, before the survey above mentioned, have enclosed or cultivated land on a different quarter adjoining the quarter on which such house is situate, in which last event such person may enter by legal subdivisions one hundred and sixty acres so as to include the dwelling and improvements.

Proviso.

Right of pre-emption transferable.

Sec. 5. The right of pre-emption in the last section referred to shall be assignable in writing, and the assignee shall have all the rights and privileges of the original pre-emption, and may enter the land in his own name.

Payment to be made, when.

Sec. 6. Payment for such lands shall be made before the same is offered for sale, and such payment shall be made to the person who at the time shall be authorized to receive and keep the school fund of the particular township. If not so paid, the right of pre-emption hereby granted shall be forfeited.

Title to vest in person making payment.

Sec. 7. On payment of the money as above provided the title of such land shall vest in the person making such payment, and the officer receiving the money shall execute a receipt specifying the amount so paid, and the number and description of the land. On presenting such receipt to the secretary of the territory, the governor shall issue a patent for said land, attested by the secretary under his official seal.

Power of county tribunal.

Sec. 8. The tribunal transacting county business shall hear and determine all applications and proofs concerning rights of pre-emption under this act lying in the respective counties, and where two or more persons shall be located on the same quarter section, and in all other cases where conflicting claims arise under this act, said tribunal shall be governed, as near as may be, by the regulations and laws of the United States which may be in force in this territory at the time of proving up such rights of pre-emption.

This act to take effect and be in force from and after its passage.

CHAPTER 132.

QUO WARRANTO.

An act concerning writs of quo warranto.

§ 1. Information in nature of, to be exhibited; when.
2. What shall be named in the information; how to proceed.
3. Several rights may be included in one information, by leave of court.

§ 4. Appearance and plea, when, and proceedings thereon.
5. Defendant found guilty, judgment; defendant acquitted, judgment.
6. Time may be allowed parties to plead, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Information in nature of, to be exhibited, when.

Section 1. In case any person shall usurp, intrude into, or unlawfully hold or execute any office or franchise, the territorial or district attorney of the proper district, with the leave of any district court, shall exhibit to such court an information in the nature of a *quo warranto*, at the relation of any person desiring to prosecute the same.

What shall be named in the information; how to proceed.

SEC. 2. The relator shall be named as such in the information against such person as usurping, intruding into, or unlawfully holding or executing any such office or franchise, and shall proceed thereon in such manner as is usual in cases of information in the nature of a *quo warranto*.

Several rights may be included in one information, by leave of court.

SEC. 3. If it shall appear to such court that the several rights of divers persons to the same office or franchise may properly be determined on one information, the said courts may give leave to exhibit one information against several persons, to try their respective rights to such office or franchise.

Appearance and plea, when, and proceedings thereon.

SEC. 4. Such person, against whom an information in the nature of a *quo warranto* shall be prosecuted, shall appear and plead at the same term in which the said information shall be filed, unless the court shall give further time; and such person prosecuting such information shall proceed thereupon with the most convenient speed.

Defendant found guilty, judgment; acquitted, judgment.

SEC. 5. In case any person, against whom any such information in the nature of a *quo warranto* shall be prosecuted, shall be adjudged guilty of any usurpation or intrusion into or unlawfully holding and executing any office or franchise, it may be lawful for the court as well to give judgment of ouster against such person from any of the said offices or franchises, as to fine such person for his usurpation, intruding into or unlawfully holding and executing any such office or franchise, and to give judgment that the relator, in such information named, shall recover his costs of such prosecution; and if judgment shall be given for the defendant in such information, he shall recover his costs against such relator.

Time may be allowed parties to plead, &c.

SEC. 6. The court in which any information shall be exhibited, shall allow to the relator and the defendant such convenient time to plead, reply, rejoin or demur as shall seem just and reasonable.

This act to take effect and be in force from and after its passage.

CHAPTER 133.

RECORDS—PUBLIC.

An act to recover public records.

§ 1. Officer to deliver his records and papers to successor.

2. When such officer dies, his executors or administrators to deliver same.

3. Penalty on officer for failing to make such delivery.

4. [illegible]ble for illegal detention of same.

5. When office is vacated, on failure to deliver records and papers, who may issue warrant for the seizure of the same.

§ 6. Authority given the officer in executing the writ.

7. Penalty on officer for not executing the writ.

8. Any person aggrieved by the issuing of such writ, may have citation issued, &c.

9. Obedience may be enforced to such citation.

10. Private person in possession of public records, to deliver same to proper officer.

11. On failure to do so, how proceeded against.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Officer to deliver his records and papers to successor.

SECTION 1. If any civil officer, having any record, books or papers appertaining to any public office or any court, shall resign, or his office be vacated, he shall deliver to his successor all such records and papers.

Executor or administrator shall deliver them, when.

SEC. 2. When such officer shall die, his executor or administrator shall deliver such records, books and papers to his successor.

Penalty on officer for failing to make such delivery.

SEC. 3. If any such officer, or the executor or administrator of such officer, shall fail to deliver such records, books or papers, he or they shall forfeit not more than one thousand nor less than one hundred dollars, to be recovered by action of debt or indictment, to the use of the county.

Officer liable for illegal detention of same.

SEC. 4. Such officer, or the executor or administrator of such officer, shall pay to any person injured by the detention of such records, books or papers, all damages which may accrue to him, to be recovered by action on the case.

When office is vacated, on failure to deliver records and papers, who may issue a warrant for their seizure.

SEC. 5. If any person whose office has become vacated, or his executors or administrators shall fail to deliver any record, book or paper to the person entitled to the same, any judge of the supreme or district court, upon the affidavit of any credible person setting forth the facts, may issue his warrant, directed to the sheriff or coroner, commanding him to seize all the records, books and papers appertaining to such officer, and deliver them to the proper officer named in such warrant.

SEC. 6. The officer executing such warrant may break open any doors, trunks or places in which any records, books or papers named in such warrant may be, or in which he may suspect them to be, and may arrest any person who shall resist the execution of such warrant, and carry him before some judge or justice of the peace, to be dealt with for obstructing the execution of process.

Authority given the officer in executing the writ.

SEC. 7. Any officer to whom any such warrant may be directed and delivered, who shall fail to execute or return the same, or to perform any duty required of him in relation thereto, shall forfeit not more than one thousand nor less than one hundred dollars, to be recovered by indictment or action on the case, to the use of the county.

Penalty on the officer for not executing the writ.

SEC. 8. Any person aggrieved by any such warrant may apply to any judge of the supreme or district court, who, upon affidavit of the applicant that injustice has been or is about to be done by such warrant, shall issue a citation to all persons interested, commanding them to appear before him at a place and time named in the citation, which shall be served by the sheriff or coroner.

Person aggrieved by the issuing of such writ may have citation issued, &c.

SEC. 9. The judge may enforce obedience to such citation by attachment, and shall proceed in a summary manner, and determine according to right and justice, and may issue his warrant for the restoration of any book, record, or paper, found to have been improperly seized.

Obedience may be enforced to such citation.

SEC. 10. If any private person shall have or obtain possession of any books, records, or papers, appertaining to any public office, he shall deliver them to the officer entitled to the same.

Private persons in possession of public records shall deliver them, to whom.

SEC. 11. If any person fail to do as required in the preceding section, he shall be proceeded against, in all respects, as is provided for in cases of officers, by this act.

Failing to do so, how proceeded against.

This act to take effect and be in force from and after its passage.

CHAPTER 134.

RECORDERS' OFFICES.

An act to establish the office of county recorder.

§ 1. Office of recorder in each county.
2. Where such office shall be kept.
3. Duty of recorder.
4. Probate clerks to be recorders; exceptions.
5. Clerk to give bond before entering on the duties of recorder; condition thereof.
6. Bond, where deposited.
7. Penalty for entering on duties without giving bond.
8. What seal recorder shall use.
9. Probate court to settle accounts of recorder.
10. What it shall be the duty of recorder to record.
11. Certain instruments to be recorded in separate books.
§ 12. List of instruments deposited for record, to be kept.
13. Manner of recording.
14. Certificate to be made on instrument recorded.
15. Index of such instruments to be kept.
16. What the index shall contain.
17. General index to all the records of the office to be kept.
18. Index to book of officers' commissions.
19. Liability of recorder for neglect of duty.
20. Penalty, also, for neglect of duty.
21. Fees to be paid or tendered before, &c.
22. Power and authority to take acknowledgments of deeds, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Office of recorder in each county.

SECTION 1. There shall be an office of recorder in each county in this territory, to be styled the recorder's office.

Where to be kept.

SEC. 2. Such office shall be kept at the seat of justice in each county.

Duty of recorder.

SEC. 3. The recorder shall duly attend the service of such office, and provide the same with large, well bound books, wherein shall be recorded, in a fair and legible hand, all instruments of writing authorized or required to be recorded.

Probate clerks to be recorders

SEC. 4. The clerks of the probate courts shall be *ex officio* recorders in their respective counties.

Clerk to give bond before entering upon the duties of recorder.

Condition thereof.

SEC. 5. Every clerk, before entering on the duties of his office as recorder, shall enter into bond to the territory of Kansas in a sum not less than one thousand nor more than five thousand dollars, at the discretion of the judge of the court of which he is clerk, with sufficient securities, to be approved by said judge, conditioned for the faithful performance of the duties enjoined on him by law, as recorder, and for the delivering up of the records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole, safe and undefaced, to his successor.

Bond, where deposited.

SEC. 6. Such bonds shall be deposited in the office of the secretary of this territory, and by him recorded.

Penalty for entering on duties without giving bond.

SEC. 7. No recorder shall enter upon or officiate in his office before he has given such security, upon pain of forfeiting the sum of two hundred dollars, one-half to the county, and the other half to him who shall sue for the same, by action of debt.

What seal recorder shall use.

SEC. 8. The recorder shall use the seal of the court of which he is clerk in all cases in which his official seal is to be affixed.

Court to settle accounts of recorder.

SEC. 9. It shall be the duty of the court, or tribunal transacting county business, to audit and settle the accounts of recorders for books purchased for the use of their offices, and allow, in their discretion, such sums as shall be reasonable, to be paid out of the county treasury.

What it shall be the duty of the recorder to record.

SEC. 10. It shall be the duty of recorders to record, *first*, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in their offices; *second*, all marriage contracts and certificates of marriage; *third*, all commissions and official bonds required by law to be recorded in their offices.

Certain instruments to be recorded in separate books.

SEC. 11. The several classes of instruments of writing mentioned in the several sub-divisions of the preceding section shall be recorded in separate books, according to their classification therein.

List of instruments deposited for record, to be kept.

SEC. 12. When any deed, mortgage, deed of trust, conveyance, bond, commission, or other instrument of writing authorized by law to be recorded, shall be deposited in the recorder's office for record, the recorder shall enter in a book, in alphabetical order, the names of the persons, and date and nature thereof, the time of delivery or deposit for record, and shall give to the person depositing the same (if required,) a receipt specifying the particulars aforesaid.

Manner of recording.

SEC. 13. The recorder shall record without delay every deed, mortgage, conveyance, deed of trust, bond, commission, or the writing delivered to him for record, with the acknowledgment, proofs and certificates, written on or under the same, with the plats, surveys, schedules and other papers therein referred to and thereto annexed, in the order of time when the same shall have been delivered for record, by writing them, word for word, in a fair hand, noting at the foot of such record all interlineations and erasures, and words visibly written on erasures, and noting at the foot of the record the day of the month and year when the instrument so recorded was delivered to him or brought to his office for record, and the same shall be considered as recorded from the time it was so delivered.

Certificate to be made on instrument recorded.

SEC. 14. The recorder shall certify on or under such deed, mortgage, conveyance, deed of trust, bond, commission, or other instrument so recorded, the day, month and year when he recorded it, and the book and page or pages of the book in which it is recorded, and when recorded, deliver it to the party, or his order.

Index of such instruments to be kept.

SEC. 15. The recorder shall keep in his office a well bound book, and make and enter therein an index, direct and inverted, to all the books of record, wherein deeds, mortgages or other writing concerning real estate or deeds of trust are recorded, distinguishing the books and pages in which every such deed or writing is recorded.

What the index shall contain.

SEC. 16. Such index shall contain, in alphabetical order, *first*, the names of the several grantors and grantees; *second*, in case the deed be made by the sheriff, the name of the sheriff, and the defendant in the execution, and of the grantee; *third*, if by executors or administrators, the name of each executor or administrator, and of the testator or intestate, and of the grantee; *fourth*, if by attorney, the name of such attorney and his constituent, and of the grantee; and *fifth*, if by a commissioner, the name of such commissioner, and of the person whose estate is conveyed, and of the grantee.

General index to all the records of the office to be kept.

SEC. 17. The recorder shall in like manner make, keep and preserve a similar index to all the books of record in his office, wherein marriage contracts and certificates of marriage are recorded.

Index of book containing officers' commissions to be kept.

SEC. 18. He shall in like manner make, keep and preserve a similar index to all the books of record, wherein commissions and office bonds are recorded, containing the names of the officers appointed, and of the obligee and obligors in any bond recorded.

Liability of recorder for neglect of duty.

SEC. 19. If any recorder to whom any deed or other writing, proved or acknowledged according to law, shall be delivered for record, *first*, neglect or refuse to make an entry thereof, or give a receipt therefor, as required by the twelfth section of this act; or, *second*, neglect or refuse to record such deed or other writing, within a reasonable time after receiving the same; or, *third*, record any deed, or other instrument of writing, before another first brought into his office and entitled to be recorded; or, *fourth*, record any deed, or other instrument of writing, untimely, or in any other manner than as hereinbefore directed; or, *fifth*, neglect or refuse to provide and keep in his office such an index as is required by this act, he shall pay to the party aggrieved double the damages which may be occasioned thereby, to be recovered by action of debt, on the official bond of the recorder, or by special action on the case.

Penalty, also, for neglect of duty.

SEC. 20. If any recorder shall wilfully neglect or refuse to perform any of the duties required of him by this act, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and proceeded against accordingly, and shall moreover forfeit and pay to the use of the county a sum not exceeding two hundred dollars, to be recovered by action of debt.

Fees must be paid or tendered before, &c.

SEC. 21. The recorder shall not be bound to make any record for which a fee may be allowed by law, unless such fee shall have been paid, or tendered, by the party requiring the record to be made.

Power of recorder to take acknowledgment of deeds, &c, when

SEC. 22. The recorder of each county shall have power and authority to take acknowledgments of deeds and other instruments of writing within his county, in all cases when the lands or other property conveyed shall be within the territory of Kansas, which acknowledgment shall be certified under his hand and official seal.

This act to take effect and be in force from and after its passage.

CHAPTER 135.

REPLEVIN.

An act regulating the action of replevin.

§ 1. In what cases maintainable.
2. No cross-replevin, or for property in possession of an officer, to be brought.
3. Affidavit to be filed, its contents.
4. Command of the writ to the officer to whom it is directed.
5. Writ not to be executed until plaintiff gives bond; its condition.
6. Writ to be executed by the officer, how.
7. Defendant may plead not guilty; what this plea shall put in issue.
8. Plaintiff failing to prosecute his suit with effect, value of property and damages for use of same to be assessed.
§ 9. Against whom, and for what, judgment in such cases shall be given.
10. When property is delivered to sheriff in such cases, proceedings.
11. If property is not delivered in sixty days, sheriff may make such damages and costs by levy, &c.
12. When defendant elects to take the damages, the right to the property vests in the plaintiff.
13. Remedy of sheriff on plaintiff's bond.
14 Remedy of defendant on plaintiff's bond.
15. Sheriff failing to return a bond, or returning insufficient one, liable for damages.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

In what cases maintainable.

SECTION 1. Whenever any goods or chattels are wrongfully taken or wrongfully detained, an action of replevin may be brought by the person having the right to immediate possession, for the recovery thereof, and for the recovery of damages sustained by reason of the unjust caption or detention, except as hereinafter specified. (*a*)

No cross-replevin shall be brought.

Sec. 2. No cross-replevin, or replevin for property in the possession of an officer by virtue of any legal authority, shall be brought.

Affidavit to be filed: its contents.

Sec. 3. No writ of replevin shall be issued, unless the plaintiff files in the office of the clerk of the court the affidavit of himself, or some credible person, stating that the plaintiff is lawfully entitled to the possession of the property mentioned in the declaration, that the same was wrongfully taken or is wrongfully detained by the defendant, and the plaintiff's right of action accrued within one year.

Command of the writ to officer.

Sec. 4. The writ of replevin shall command the officer to whom it is directed to cause (if the plaintiff give the security required by law) the goods and chattels mentioned in the declaration to be delivered to the plaintiff without delay, and to summon the defendant to appear in court on the return day of the writ, and answer the plaintiff in the premises.

Writ not to be executed until plaintiff gives bond; its condition.

Sec. 5. No writ of replevin shall be executed until the plaintiff, or some responsible person for him, as principal, enters into a bond to the officer to whom the writ is directed, with sufficient sureties, in double the value of the property, to be ascertained by the officer, conditioned that he will prosecute the suit with effect and without delay, make return of the property if return thereof is adjudged, keep harmless the officer touching the replevying the property, and pay all costs which may accrue in said action.

Writ, how executed.

Sec. 6. Upon the receipt of the writ, and the bond required by this act, the officer shall, without delay, execute the writ, by causing the property mentioned in the declaration to be delivered to the plaintiff, and by summoning the defendant according to the tenor of the writ.

Defendant may plead not guilty; what this plea shall put in issue.

Sec. 7. The defendant may plead that he is not guilty of the premises charged against him, and this plea shall put in issue not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof.

Failure to prosecute suit with effect, proceedings.

Sec. 8. If a plaintiff in replevin fail to prosecute his suit with effect and without delay, the court or jury shall assess the value of the property taken, and the damages for the use of the

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(*a*) See Rector vs. Chevalier, 1 Missouri Rep., 345; Ramsey vs. Waters *et al.*, 1 Missouri Rep., 406; Penrose vs. Green, 1 Missouri Rep., 774; Crocker vs. Mann, 3 Missouri Rep., 472; Skinner vs. Stouse, 4 Missouri Rep., 93; Phillips vs. Townsend, 4 Missouri Rep., 101; Moore vs. Moore, 4 Missouri Rep., 421.

same, from the time of issuing the writ until the return thereof shall be made, as in other like cases.

Against whom and for what, judgment in such cases shall be given.

SEC. 9. In such case the judgment shall be against the plaintiff and his sureties, that he return the property taken, or pay the value so assessed, at the election of the defendant; and also pay double the damages assessed for the detention of the property, and costs of suit.

Defendant not required to make election, until, &c.

SEC. 10. The defendant shall not be required to make such election until the property is delivered to the sheriff on the execution, and the defendant has notice thereof.

Defendant may cause damages and costs to be levied, when.

SEC. 11. If such property shall not be produced and delivered to the sheriff within sixty days after execution issued, the defendant may cause the assessed value thereof, with damages and costs, to be levied.

When defendant elects to take damages, right of property vests in plaintiff.

SEC. 12. In such case, the defendant's right to the property shall not be impaired by levying the assessed value thereof; but if the property be delivered to the sheriff, and the defendant elect to take the value assessed, such election shall operate to vest all his right to the property in the plaintiff.

Remedy of sheriff on plaintiff's bond.

SEC. 13. If an officer is damnified by reason of taking any property by virtue of a writ of replevin, by the direction of the plaintiff, he may maintain an action therefor upon the bond by him taken.

Remedy of defendant on plaintiff's bond.

SEC. 14. If the plaintiff violate the condition of his bond, the defendant may sue thereon, in the name of the officer, to his own use.

Sheriff failing to return bond, or returning an insufficient one, liable for damages.

SEC. 15. If the officer fail to take a bond of the plaintiff, and return the same, as required by this act, or if the bond taken is adjudged insufficient, at the return term of the court, and the plaintiff fails to perfect it, if required, the officer shall be liable to the party injured for all damages by him sustained, to be recovered by action of debt, on the officer's official bond, or by an action on the case.

This act to take effect and be in force from and after its passage.

CHAPTER 136.

REPRESENTATION.

An act to apportion the representation in the next legislative assembly.

§ 1. Apportionment of the legislative assembly.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Apportionment of the legislative assembly.

SECTION 1. In the next legislative assembly, the county of Nemaha shall be entitled to one representative; the county of Marshall shall be entitled to one representative; the county of Reily shall be entitled to one representative; the county of Calhoun shall be entitled to one representative; the county of Jefferson shall be entitled to one representative; the county of Johnson shall be entitled to one representative; the county of Lykins shall be entitled to one representative; the county of Linn shall be entitled to one representative; the county of Bourbon shall be entitled to one representative; the county of Allen shall be entitled to one representative; the county of Anderson shall be entitled to one representative; the county of Franklin shall be entitled to one representative; the counties of Lykins and Linn shall be entitled, jointly, to one representative; the counties of Bourbon and Allen shall be entitled, jointly, to one representative; the counties of Breckenridge and Madison shall be entitled, jointly, to two representatives; the counties of Anderson and Franklin shall be entitled, jointly, to one representative; the county of Atchison shall be entitled to three representatives; the county of Shawnee shall be entitled to two representatives; the county of Doniphan shall be entitled to three representatives; the county of Leavenworth shall be entitled to four representatives, and the county of Douglass shall be entitled to five representatives.

This act to take effect and be in force from and after its passage.

CHAPTER 137.

REVENUE.

An act to provide for the collection of revenue.

ARTICLE I. Of the objects of taxation, rates of taxes, and subjects exempt.
II. Of the assessment of the property for taxation.
III. Of the collection of the revenue; and other provisions.
IV. Of the county revenue.
V. Of the sale of lands for taxes.
VI. Of the duties of collectors when their terms of service expire.

ARTICLE I.

Of the objects of taxation, the rates of taxes, and subjects exempt.

§ 1. Objects for which taxes may be levied.
2. Subjects exempt from taxation.
§ 3. Rates of poll and other taxes.
4. Reference to rates of tax and license.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Objects for which taxes may be levied.

SECTION 1. For the support of the government of the territory, the payment of the public debt, and the advancement of the public interest, a tax shall be levied upon the following objects: *First*, all free male persons over twenty-one and under fifty-five years of age. *Second*, lands and lots of ground, including the houses and improvements thereon. *Third*, leasehold interest in land for the term of ten years or more, as lands. *Fourth*, all slaves. *Fifth*, household furniture, to include silver and gold plate, kept for use or ornament, and by any one family, above the value of two hundred dollars. *Sixth*, pleasure carriages kept for the use of the owner or his family. *Seventh*, horses, mares, geldings, neat cattle, mules and asses, above one year old. *Eighth*, watches, with their chains, seals and other appendages, and clocks, kept to be worn or used by the owner or his family. *Ninth*, shares of stock in banks and all other incorporated companies, except hospitals, literary institutions and library associations. *Tenth*, bills of exchange, bonds, notes and other securities, and all money on hand taken, negotiated and kept by brokers and exchange dealers, in their business as such, other than such as may be the property of citizens of the territory, except themselves. *Eleventh*, all money loaned at interest to citizens of this territory, whether the same be secured by a bill of exchange, bond, note or otherwise; all money in hand, and all territorial warrants. *Twelfth*, the property of all corporations, over and above their capital stock, and all money held by such corporation in trust for persons or corporations, other than citizens and corporations of this territory, and used in trade for the benefit of such persons or corporations. *Thirteenth*, shares of stock or interest in any steamboat. *Fourteenth*, all licenses taxable by law.

Subjects exempt from taxation.

SEC. 2. The following subjects are exempted from taxation: *First*, lands and other property belonging to the territory. *Second*, lands or other property belonging to any county of the territory. *Third*, market-houses, town halls, and other public structures, with their furniture and equipments; and all public squares and lots kept open for health, use or ornament, belonging to any city, town or village in the territory. *Fourth*, lands or lots of ground granted by the United States or this territory to any county, town, city, village or township, for the purposes of education, until disposed of to individuals by sale or lease. *Fifth*, school-houses and other buildings for the purposes of education, with their furniture and equipments; and the lands appurtenant thereto and used therewith, so long as the same shall be used for that purpose. *Sixth*, hospitals for the sick, and public poor-houses, with their furniture and equipments; and the lands appurtenant thereto and used therewith, so long as the same shall be used for that purpose only. *Seventh*, churches, chapels and other public buildings for religious worship, with their furniture and equipments; and the lands appurtenant thereto and used therewith, so long as the same shall be used for that purpose only. *Eighth*, cemeteries and grave-yards set apart and used for that purpose only. *Ninth*, the property of all widows and minor orphans, who are not worth more than one thousand dollars.

Rates of poll tax and others.

SEC. 3. The annual tax levied upon the subjects mentioned in this act shall be at the following rates: *First*, on free male persons over twenty, one or under fifty-five years of age, fifty cents. *Second*, on lands and town lots, including the houses and improvements thereon, or the possession or occupancy of public lands, pre-emption or otherwise, and all other property, real or personal, subject to taxation by this act, one-sixth part of one per centum of the assessed value thereof.

References to rates of tax, &c.

SEC. 4. The rates of taxes upon all licenses, subject to taxation, are declared under their appropriate titles.

ARTICLE II.

Of the assessment of property for taxation.

§ 1. County assessor to be appointed.
2. Certificate to be given.
3. Failure to serve, tribunal to appoint.
4. To take an oath of office.
5. To give bond, &c.
6. To give notice when and where he will attend, &c.
7. When to commence, &c.
8. Duties of persons liable to tax, &c.
9. Shall deliver a true list of property to assessor.
10. On failure, assessor to obtain a list.
11. Duty of assessor in relation thereto.
12. List to describe property, &c.
13. Town lots, &c., to be described.
14. Assessor to make out a plain list.
15. Lists transmitted by mail, assessor to pay postage.
16. When list is not received.
17. False list to be taxed triple, &c.
18. When assessor may make out a list.
19. Not required to make a list, when.
20. Corporators to pay respective taxes.
§ 21. Duty of the county recorders.
22. Duty of tribunal clerk.
23. Tribunal may withhold pay, when.
24. Assessor to make complete list.
25. Names to be in alphabetical order.
26. To show the aggregate amount, &c.
27. Lands to be assessed separately, &c.
28. Land omitted by assessor, when.
29. Copy of assessment to be delivered to owner, when.
30. Copy of tax book for tribunal.
31. Duty of tribunal.
32. Tax book to remain in clerk's office.
33. Person aggrieved may appeal.
34. When tribunal fails to meet.
35. Tribunal to determine appeals.
36. Clerk to furnish collector with copies.
37. Duty of the clerk.
38. When assessor may administer oath.
39. Assessor fails in his duties, penalty.
40. Compensation of assessor.
41. To verify account by oath.
42. May be removed from office, when.

County assessor to be appointed.

SECTION 1. A county assessor shall be appointed by the tribunal transacting county business in the several counties in this territory, at the last term held by said tribunal, in the year one thousand eight hundred and fifty-five, and at the last term held by said tribunal in each year thereafter.

Certificate to be given.

SEC. 2. The clerk of the said tribunal shall deliver to the person thus appointed, immediately after his said appointment, a certificate thereof under the seal of said tribunal.

On failure to serve, tribunal to fill vacancy.

SEC. 3. If no person be appointed as provided in the first section, or if the person appointed fail to take the oath and enter into the bond required of assessors on or before the first day of January after his appointment, or if at any time there shall be a vacancy in the office of assessor, then, in either case, it shall be the duty of said county tribunal to make said appointment or fill said vacancy for that year.

To take an oath of office.

SEC. 4. Every assessor shall take the oath of office prescribed by law, and cause the same to be endorsed on the certificate of his appointment before entering upon the duties of his office, and in default thereof shall forfeit one hundred dollars for the use of the territory.

To give bond, &c.

SEC. 5. Every assessor, before entering upon the duties of his office, shall give bond and security to the territory, to the satisfaction of said county tribunal, in a sum not less than one hundred nor more than five hundred dollars, the amount to be determined by said tribunal, conditioned for the faithful performance of the duties of his office; which bond shall be deposited in the office of the clerk of said tribunal.

To give notice when and where he will attend, &c.

SEC. 6. On or before the first day of January, of each and every year, it shall be the duty of said assessor to give notice, by writing posted at four of the most public places in each township in his county, that he will attend in said township, on a day to be by him named in said written notices, and at a place in said township the most convenient to the inhabitants thereof, for the purpose of receiving from all persons subject to tax within said township, a list of all the property and persons subject to tax, as hereinafter provided.

When to commence, &c.

SEC. 7. Every assessor shall commence on the first day of Februrary of each year, "if the first day be not Sunday," in some one township, at the time and place fixed by him in his written notice, and shall attend successively all the different townships at the times and places designated as aforesaid.

Duties of persons liable to tax, &c.

SEC. 8. It shall be the duty of all persons, liable to tax in the township, to attend at the time and place designated by the county assessor, and deliver to the said assessor a just and true list of all property owned by him or her, or of which he or she had the management or control on the first day of February in each year, taxable by law, except merchandise, and being within the county; and attach to said lists of property a fair cash value thereof, on oath or affirmation, to be administered by said assessor.

Shall deliver to assessor a true list of property.

SEC. 9. In the same manner every such person shall deliver to the assessor a just and true list of all property, taxable by law, except merchandise, which he owns, or of which he has the charge or management, being in any other county and not there listed or given in for taxation, for that year, in such other county.

On failure, assessor to go to residence and obtain list.

SEC. 10. If any person shall fail to furnish the list of property as herein required, and it shall become necessary for the assessor, in order to obtain said list, to go to the residence of such person, or to make assessment from actual examination, he shall be entitled to receive, from the person so failing, the sum of one dollar, to be included with and collected as other taxes.

Duty of assessor in case of not receiving list.

SEC. 11. In case of failure to furnish the list as herein required, it shall be the duty of the assessor to make out such list from personal examination, or the best information he can obtain, and for that purpose he shall have lawful right to enter into any lands and houses, and make any examination and search which may be necessary, and may examine the owners of the property, or any other person, upon oath, touching the same.

List to describe property, &c.

SEC. 12. Every list, required by the preceding sections, shall particularly describe each tract of land contained therein, so that the same may be found and known by the description; when the land is a part of a public survey of the United States, the township and range shall be noted, and the sectional and fractional part, or other legal subdivision thereof, shall be stated; and in all other cases of land claims, the quantity and local position shall be set forth, and the number of the survey, and the name of the original claimant, if known to the party, shall be stated; but in all cases to be assessed to the person appearing to be the owner at the time of assessment.

Town lot to be described.

SEC. 13. Each town lot shall be described by the name of the city, town or village, the street or alley where situated, the number (if any) of the lot, and the square or block of which it forms a part, and the size in front and depth.

Assessor to make out a distinct list.

SEC. 14. Every assessor, as soon as he shall have completed his assessment, shall make out, from the lists delivered to him, under the eleventh section of this act, a distinct list for each county in which any such taxable property may be, and transmit the same, by mail or otherwise, to the assessor of the proper county, who shall assess the same as other taxable property therein, if not before assessed for the same year.

Postage to be paid, how.

SEC. 15. If such lists shall be transmitted by mail, the postage thereon shall be paid by the assessor who receives the same, and the amount thereof shall be allowed and paid to him at the time and in the manner of paying other expenses of assessment.

When list not received.

SEC. 16. When the lists, transmitted from one assessor to another, as required in the fifteenth section of this act, shall not be received by the proper assessor before he has made return of his tax book, he shall, without delay, assess the property in such list contained, and make return thereof in a supplemental tax book, which shall be proceeded on, as nearly as may be, as the original.

False list to be taxed triple, &c.

SEC. 17. If any person shall deliver to the assessor any false or fraudulent list, the property therein specified, and all that ought to have been listed therein, shall be taxed triple, and the offender shall, moreover, be subject to indictment for the fraud, and may be fined in any sum not exceeding five hundred dollars.

When assessor may make out a list.

SEC. 18. Whenever there shall be taxable property in any county, and from any cause no list thereof shall be given to the assessor in proper time and manner, the assessor shall himself make out the list on his own view, or on the best information he can obtain, and for that purpose he shall have lawful right to enter into any lands and houses, and make any examination and search which may be necessary, and may examine the owners of the property, or any other person, upon or touching the same.

When not required to make a list.

SEC. 19. Persons owning shares of stock in banks and other incorporated companies, taxable by law, are not required to deliver to the assessor a list thereof, but the president or other chief officer of such corporation shall deliver to the assessor a list of all shares of stock held therein, and the names of the persons who hold the same.

Corporator to pay respective taxes.

SEC. 20. The taxes assessed on shares of stock embraced in such list shall be paid by the corporators respectively, and they may recover from the owners of such shares the amount so paid by them, or deduct the same from the dividends accruing on such shares, and the amount so paid shall be a lien on such shares respectively, and shall be paid before a transfer thereof can be made.

Duty of the county recorders.

SEC. 21. The recorder of each connty shall, in the month of January of every year, make out an abstract, in alphabetical order, of all deeds and other conveyances of land recorded in his office during the preceding year, showing the names of the acquirers and from whom acquired, the quantity and description of the land, and shall deliver such abstract to the clerk of the county court and take his receipt therefor.

Duty of tribunal clerk.

SEC. 22. The clerk of the county tribunal shall deliver to the assessor, on or before the first day of February in every year, the tax book of the preceding year, the abstract of conveyances furnished by the recorder of the county, and the list of taxable lands, and take his receipt therefor; and the assessor, as soon as he shall have completed his assessment and made his tax book for the year, shall return the whole of such papers and documents to the clerk.

Tribunal may withhold pay of assessor, when.

SEC. 23. If the assessor shall fail to return such papers and documents to the clerk, or shall return them in a defaced or mutilated condition, the county tribunal shall withhold so much of his compensation as will be sufficient to pay for the procurement of new copies thereof.

Assessor to make complete list.

SEC. 24. The assessor, on examination and comparison of the list of property delivered by individuals, the abstract of conveyances furnished by the recorder, and the list of lands furnished by the register of lands, shall make a complete list of all the taxable property in his county, to be called the tax book.

Tax book to contain names in alphabetical order.

SEC. 25. The tax book shall contain the names, in alphabetical order, of all persons to whom property has been assessed therein; it shall be in tabular form, with a suitable caption, and separate columns for the names of the owners, each kind of property taxed, the assessed value of each kind, and the whole amount chargeable to each person, and such other columns as may be found necessary and convenient in practice.

SEC. 26. Such "tax book" shall be so made as to show the aggregate amount of territorial revenue derived from taxes imposed on brokers and exchange dealers, steamboats, money, bonds, notes, bills of exchange, and other securities, and from property owned by corporate companies.

To show the aggregate amount, &c.

SEC. 27. Each tract of land and town lot shall be assessed, valued and listed separately, and each kind of property shall be assessed separately from every other kind; and all leasehold interest in land, for the term of ten years or more, shall be classed and assessed as lands; but horses, mules, jacks, jennies, cattle, clocks, watches, carriages and household furniture shall be entered in one column, under the head of other personal property.

Lands to be assessed separately, &c.

SEC. 28. If, by any means, any tract of land or town lot shall be omitted in the assessment of any year or series of years, and not put upon the tax book, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon his tax book before the same is returned to the court, with all arrearages of tax, which ought to have been assessed and paid in former years, charged thereon.

Land omitted by assessor, when.

SEC. 29. The assessor shall deliver to any owner of property assessed for taxation, upon demand, a copy of assessment thereof, written and signed by himself; and such list shall in all cases be left with some member of the family, when the assessment is made in the absence of the head of the family.

Copy of assessment to be delivered to owner, when.

SEC. 30. The assessor shall make out and return to the county tribunal, on or before the first day of June in every year, a fair copy of the tax book.

Copy of tax book to be made to tribunal, when.

SEC. 31. The county tribunal of each county shall, at the next regular term after the assessor shall have returned the tax book as required in the next preceding section, if such term be within thirty days, hear and determine all appeals from the valuation of property by the assessor; and if not within thirty days, to be ordered by any two justices of the court, and published by the sheriff for ten days by written or printed notices, to be set up in at least six of the most public places in the county.

Duty of tribunal

SEC. 32. The tax book shall remain in the office of the clerk of the county tribunal for ten days before the session of the court of appeals, open for the inspection of all concerned.

Tax book to remain in office of clerk.

SEC. 33. Every person who thinks himself aggrieved by the assessment of his property may appeal, and every appeal shall be in writing, and shall state specially the grounds of the appeal, and the matter or things complained of, and no other matter shall be considered by the court.

Person aggrieved may appeal.

When tribunal fails to hold session.

SEC. 34. If, from any cause, a session of the county tribunal cannot be had within thirty days next after the return of the tax book by the assessor, the clerk of that tribunal shall take to his assistance any two justices of the peace of the county and hold a court of appeals, giving notice thereof as provided in the thirty-fifth section of this article.

Tribunal to determine.

SEC. 35. The county tribunal shall hear and determine all appeals in a summary way, and shall correct and adjust the tax book accordingly.

Clerk to furnish collector with a copy.

SEC. 36. As soon as the tax book shall be corrected and adjusted, and the county tax stated thereon, the clerk of the county tribunal shall make out a fair copy thereof, authenticated by the seal of the court, for the use of the collector.

Duty of the clerk.

SEC. 37. The clerk shall at the same time make out, certify, and authenticate, by the seal of the court, an aggregate abstract of the tax book, placing each kind of property taxed under its appropriate head, with the aggregate value thereof and the aggregate amount of taxes.

When assessor may administer oath.

SEC. 38. When any fact, matter or thing is required by this article to be verified by oath or affirmation, any assessor may administer the same.

When assessor fails in his duties, penalty.

SEC. 39. Every assessor who shall fail to perform any duty enjoined upon him by this law, in the time prescribed, may be removed from office and another put in his stead by the county tribunal, and when removed his bond shall be put in suit.

Compensation of assessor.

SEC. 40. The compensation of the assessor shall be three dollars for each day he may be engaged in the performance of the duties of his office, one-half of which shall be paid out of the county treasury and the other half out of the treasury of the territory.

To verify account by oath.

SEC. 41. The tribunal transacting county business shall cause the assessor to verify his account by oath or affirmation, and under the seal of the court cause to be verified to the auditor the amount to be paid by the territory, who shall draw his warrant on the treasury of the territory.

May be removed from office, when.

SEC. 42. Every assessor who shall fail to perform any duty enjoined upon him by this law, in the time prescribed, may be removed from office and another appointed in his stead, and when removed his bond shall be put in suit.

ARTICLE III.

Of the collection of the revenue, and other provisions.

§ 1. Sheriff to be collector.
2. To give bond as collector.
3. Official bond of sheriff.
4. Tribunal may appoint sheriff, when.
5. Of duplicate bonds.
6. Tribunal to examine bonds, &c.
7. Office declared vacant, when.
8. Auditor may require tribunal to take additional bond.
9. Duty of auditor and tribunal.
10. May appoint deputy.
11. Deputation to be attested.
12. Notice to be given.
13. Tax-book to be delivered.
14. Duty of collector to subscribe receipt, &c.
15. Penalty on clerk for failing, &c.
16. Power of collector to levy, &c.
17. Levy to be made, when.
18. Costs of levy and sale to be collected.
19. Officers of corporations to give certificates of taxable shares.
20. Penalty for failing to give certificate.
21. Collector to give receipt for taxes.
22. Sheriff to collect all fines.
23. Clerks to keep account of fines, &c.
24. Courts to make settlements.
25 Other officers to settle.
26. Proceedings when court makes settlement.
§ 27. Duplicates of records of settlement.
28. Officer failing to pay, proceedings.
29. Duty of collector on receiving amount.
30. Officer failing to settle, penalty.
31. Delinquent to pay five per cent. a month.
32. Tribunal to make collector account.
33. When collector is unable to collect, proceedings.
34. Copy of delinquent list to be set up.
35. Delinquent list to be returned, when.
36. Special term called, when.
37. Settlement to be recorded.
38 Collector failing to settle.
39. Settlement transmitted to auditor.
40. Application of twenty-second section.
41. Delinquent list to be delivered to successor.
42. Collectors to pay revenue into treasury, when.
43. Penalty for failure to pay in revenues.
44. Compensation of collector.
45. Compensation of officer paying over.
46. Lien allowed to collector in certain cases.
47. Amount returned delinquent to be refunded.
48. Indictment against collector.

Sheriff to be collector.

Section 1. Every sheriff hereafter elected shall be *ex officio* collector of the revenue within his county for two years, commencing on the first day of October next ensuing his election.

To give bond as collector.

Sec. 2. Every sheriff shall, at the time of executing his bond as sheriff, and before entering on the duties of that office, give bond and security to the territory, to the satisfaction of the county tribunal, in a sum at least double the amount of all the revenue to be collected by him, conditioned that he will faithfully and punctually collect and pay over all the territorial and county revenue for the two years next ensuing the first day of September thereafter, and that he will, in all things, faithfully perform all duties of the office of collector according to law.

Official bond of sheriff.

Sec. 3. The official bond of the sheriff, as collector, shall be signed by at least five solvent securities, and he shall not enter upon the discharge of the duties of his office as sheriff until he shall have executed his bond as collector.

Tribunal to appoint, when.

Sec. 4. If any sheriff shall neglect or refuse to give bond as required by the two next preceding sections, his office of sheriff shall immediately, upon such neglect or refusal, be vacant, and the county tribunal shall forthwith appoint some person to fill such vacancy who will give such bond.

Duplicate bonds. SEC. 5. Such bond shall be executed in duplicate, one part thereof shall be deposited and recorded in the office of the clerk of the county tribunal, and the other part shall be transmitted by the clerk to the auditor of public accounts.

Tribunal to examine bond, &c. SEC. 6. The county tribunal shall, at the end of the first year, carefully examine the bond given by the sheriff as collector, and may again examine the same at any time before the last book of the second year of his term shall be delivered to him, and by such examination ascertain if the bond be sufficient, and the securities thereto still solvent and sufficient; and upon such examination, if found to be necessary, the county tribunal shall require such sheriff to give an additional bond as collector, with good security to be approved by the court, as in the taking of the original bond.

Office declared vacant, when. SEC. 7. If such sheriff shall fail to give such additional bond and security, for ten days after he shall be required to do so, his office of sheriff and collector shall be vacant.

Auditor may require tribunal to take an additional bond. SEC. 8. Whenever the amount of the bond given by any collector of the revenue shall not be equal to the amount of the revenue with which his immediate predecessor in the same county was charged, the auditor of public accounts shall require the county tribunal of the proper county to take additional bond and security; and on failure, in ten days after he shall be notified so to do, his office of collector, and if he be the sheriff, shall be declared vacant by the county tribunal.

Duty of auditor and tribunal. SEC. 9. Whenever it shall appear to the satisfaction of the auditor that the security given by any collector is insufficient, he and the county tribunal shall proceed in the manner provided in the next preceding section.

May appoint deputy. SEC. 10. The collectors of the revenue may perform their duties by deputies, and every deputy shall have the same legal qualifications as the principal.

Deputation to be attested. SEC. 11. Every deputation shall be in the writing, under the hand and seal of the principal, who may revoke the same at pleasure by a similar writing.

Notice to be given. SEC. 12. The collectors shall give public notice of every deputation and revocation, by putting up a notice at the court-house door of their county.

Tax book to be delivered. SEC. 13. As soon as may be, after the tax books of each year have been corrected and adjusted, and the amount of the county tax stated therein, according to law, the county tribunals shall cause the same to be delivered to the proper collectors, who shall give receipts therefor to the clerks of the county, respectively; and each collector shall be charged by such clerk with the whole amount of the tax book so delivered to him.

Duty of collector to subscribe receipt, &c.

SEC. 14. The collector shall also subscribe a receipt for the tax book, endorsed on the aggregate abstract thereof, as required to be made out by the clerk by the provisions of the forty-first section of the second article of this act, which abstract, with such receipt endorsed thereon, certified and authenticated as required by the forty-first section aforesaid, shall be transmitted by the clerk to the auditor of public accounts, on or before the first Monday of October next after the abstract shall be made out.

Penalty on clerk for failing, &c,

SEC. 15. If the clerk shall neglect or refuse to transmit such abstract as required by the provisions of the preceding section, he shall forfeit to the territory the sum of one hundred dollars, to be recovered in her name, by action of debt; and the certificate of the auditor of public accounts, authenticated by the seal of his office, setting forth the failure of the clerk to comply with the provisions of the preceding section, shall be *prima facie* evidence of the facts certified on the trial of such action.

Power of collector to levy, &c.

SEC. 16. The collectors shall diligently endeavor, and use all lawful means, to collect all the taxes specified in the tax books of their respective counties, and to that end they shall have power to seize and sell the goods and chattels of the person liable for the tax, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued or judgments at law, and no property shall be exempt from seizure or sale for taxes.

Levy to be made, when

SEC. 17. But no such seizure and sale of goods shall be made until the collector has demanded payment of the tax either by personal application to the person liable to pay the same, or by visiting his place of abode for that purpose, and the lapse of ten days without payment after such demand.

Costs of levy and sale to be collected.

SEC. 18. Whenever taxes shall be levied by the sale of goods, in addition to the amount of the tax, the collector shall levy the necessary costs of the proceeding and ten per centum on the amount of the tax for his trouble.

Officers of corporation to give certificates of taxable shares.

SEC. 19. The cashier, secretary, or chief clerk of any corporation the shares of which are taxable by law, at the request of the collector, shall give him a certificate under his hand, showing the number and amount of shares held in the stock of such corporation, the names of the holders and the incumbrances thereon; and such collector, in default of the payment by the corporation of the taxes due thereon, as required by the twenty-third section of the second article of this act, shall seize and sell the same in the manner prescribed in the twenty-third section of this article, and the purchaser thereof shall be admitted to all the rights, powers and privileges that the holders of such shares had at the time of seizing the same, and shall be entered by such corporation on their books as the owners of such shares.

Penalty for failing to give certificate.

SEC. 20. If any corporation, or any officer thereof, shall fail to comply with the provisions of the preceding section, such corporation shall forfeit to the territory the sum of one thousand dollars, to be recovered by action of debt in the name of the territory, in any court of competent jurisdiction.

Collector to give receipt for taxes.

SEC. 21. When a collector shall receive taxes on lands, he shall designate in his receipt for the same the particular tracts on which the taxes are paid, naming the range, township, section, quarter section, or quarter quarter section, as the case may require; or, if paid on town lots, then he shall designate the lots on which the taxes are paid, giving the number of the lots, the square or block, and the street or alley on which they are situate.

Sheriffs to collect all fines.

SEC. 22. The sheriffs of the several counties shall collect and account for all fines, penalties, forfeitures and other sums of money, by whatever name designated, to the use of the territory or any county, in virtue of any order, judgment or decree of a court of record.

Clerks to keep account of, &c.

SEC. 23. The clerks of the several courts of record shall keep a true account of all fines, penalties, forfeitures and judgments imposed, adjudged or rendered in favor of the territory or any county by their respective courts, distinguishing those payable to the territory from those payable to the county, and shall keep the same open for the inspection of the judges of the respective courts and the collector of the revenue.

Courts to make settlement, &c.

SEC. 24. The several courts of record shall, at each regular term, cause the sheriffs of the respective counties to make a full and fair statement and settlement of all fines, penalties, forfeitures and judgments received by them and not before accounted for and paid over.

Other officers to settle with court.

SEC. 25. Whenever money shall come to the hands of any officer, except only the territorial treasurer and collector of the revenue, on account of fines, penalties, forfeitures and judgments, in favor of the territory or any county, such officer shall state and settle the account thereof before the court under whose authority the money was received, or on whose writs, records or proceedings the same accrued, at the first regular term after the receipt of the money, in the same manner as is above required of sheriffs.

Proceedings when court makes settlement.

SEC. 26. Whenever the court shall make such settlement with any officer, the substance thereof shall be entered on record, so as to show, separately, the whole amount received by such officer, the amount of commissions allowed to him by law for collection, how much remains due to the territory and how much to the county, on what account each sum of money was received, and to what particular fund, if any, it belongs.

Duplicates of records of settlement.

Sec. 27. Whenever any such settlement shall be made, the court shall cause duplicate copies of the record thereof to be certified and delivered, one to the collector of the revenue for the county, and the other to the clerk of the county tribunal, with the sums appearing thereby to be due to the territory and to the county respectively.

Officer failing to pay, proceedings.

Sec. 28. All officers who shall have made settlements with the courts shall forthwith pay to the collector the full amount with which they stand charged on such settlement, and in default thereof the collector shall enforce the payment in the manner and by the means prescribed in the twenty-third, twenty-fourth and twenty-fifth sections of this article in regard to taxes.

Duty of collector on receiving amount.

Sec. 29. Whenever the collector shall receive the amount due from any such officer by voluntary payment, or by sale of goods, he shall give such officer duplicate receipts for the same, stating therein the whole amount received, how much for the territory and how much for the county, and the particular fund, if any, to which the same belongs; and the officer taking such receipt shall, without delay, deposit one of them with the clerk of the county tribunal.

Officer failing to settle, punished.

Sec. 30. Every officer required by this act to make settlement with the respective county tribunals and pay over to the collector, who shall fail to settle his account in the time and manner prescribed, may be attached and imprisoned until such settlement shall be made to the satisfaction of the tribunal to which he is accountable.

Delinquent to pay five per cent. per month.

Sec. 31. Every such officer who shall fail to pay the amount found due from him on such settlement, and who shall be returned by the collector to the county tribunal as a delinquent, so that the collector shall be credited in his account with the amount of the delinquency, shall forfeit five per centum per month upon the amount due, from the time it ought to have been paid until collected, which may be recovered by suit upon his official bond or otherwise, according to law.

Tribunal to make collector account.

Sec. 32. The several county tribunals shall, at each regular term, cause the collector to settle his account of all money received by him from clerks, sheriffs, recorders and other officers, on account of fines, penalties and judgments; and the settlement shall be entered of record, so as to show what is due to the territory and to the county respectively, from what officer received, from what branch of the revenue, and the particular fund, if any, to which the same belongs.

Collector unable to collect, proceedings.

SEC. 33. Whenever any collector shall be unable to collect any taxes specified in the tax book, having diligently endeavored and used all lawful means to collect the same, he shall make a list thereof, to be called the delinquent tax list, in which shall be stated the names of all persons whose taxes cannot be collected, alphabetically arranged, with the amount due from each, and a like list of all delinquent clerks and other officers hereinbefore required to pay to the collectors the amount of revenue by them respectively received, to be called the list of delinquent officers.

Copy of delinquent list to be set up.

SEC. 34. On or before the first day of November, in each year, each collector shall set up a copy of such delinquent lists at the court-house door of his county, and also at one of the most public places in each township in the county; and on failure to put up such copies, such collector, so failing, shall be liable for the amount of such delinquent lists.

When delinquent list to be returned.

SEC. 35. At the term of the county tribunal, to be held on the second Monday in November, the collector shall return the delinquent lists, under oath or affirmation, to such tribunal, and with his account of all moneys received by him on account of taxes and other sources of revenue, and the amount of such delinquent list, or so much thereof as the said tribunal shall find properly returned delinquent, shall be allowed and credited to the collector in his settlement.

Special term called, when.

SEC. 36. If there be no regular term of the county tribunal in any county on the second Monday in November, a special term of such court shall be called by any two justices thereof, to be held on that day in each year, for the purpose of making the settlement required by the preceding section.

Settlement to be recorded.

SEC. 37. The court shall cause such settlement to be entered of record, so as to show the amounts due to the territory and county respectively.

Collector failing to settle.

SEC. 38. If any collector fail to make settlement in the time and manner prescribed, he may be attached until he make such settlement to the satisfaction of the county tribunal.

Settlement transmitted to auditor.

SEC. 39. Immediately after every settlement made by any collector with the county tribunal, a copy of the record thereof shall be certified and transmitted by the clerk to the auditor of public accounts.

Application of 22nd section.

SEC. 40. The provisions of the twenty-second section of this article shall be applicable to the case of a clerk failing to comply with the provisions of the next preceding section.

SEC. 41. The delinquent lists allowed to any collector shall be delivered to his successor, who shall collect the same and account therefor as for other moneys collected by him, and shall return such list to the clerk of the court, to be delivered to his successor, and so on, until the whole shall be collected.

Delinquent list to be delivered to successor.

SEC. 42. Every collector shall, annually, on or before the first Monday in December, pay into the territorial treasury the whole amount of the revenue with which he may stand charged, deducting his commission, and the treasurer shall give duplicate receipts for the amount paid, one of which shall be deposited with the auditor within five days after its date.

When collectors to pay revenues into treasury.

SEC. 43. For every failure of the collector to deposit the revenue, as required by the forty-second section of this article, he shall forfeit to the territory the sum of five hundred dollars, to be recovered of him and his securities by suit on his official bond, and the auditor shall direct the prosecution of such suit immediately on the occurrence of such failure.

Penalty for failure to pay in revenue.

SEC. 44. Every collector shall receive, as full compensation for his services in collecting the territorial and county revenue, commission, as follows: *First*, upon all revenue collected upon licenses, *two per centum*. *Second*, upon all revenue collected from clerks, recorders and other officers, *two per centum*; and upon all other revenue as follows: *First*, upon all sums not exceeding one thousand dollars, *seven per centum*. *Second*, upon all additional sums above one thousand dollars and not exceeding two thousand dollars, *five per centum*. *Third*, upon all additional sums above two thousand dollars and not exceeding three thousand dollars, *four per centum*. *Fourth*, upon all additional sums above three thousand dollars, *three per centum*; and the collectors shall be allowed five cents for every mile they may necessarily travel in going to the seat of government and returning to their place of residence, for the purpose of paying the revenue into the territorial treasury. *Provided*, such compensation shall not be allowed for milage more than once in each year.

Compensation of collector.

SEC. 45. All officers required by this article to receive and pay over to the collectors any part of the county revenue, shall receive, as full compensation, commission on the amount received at the rate of *two per centum*.

Compensation of officer paying over.

SEC. 46. Every collector who shall pay into the treasury the full amount of the territorial tax in the book, on or before the day prescribed, shall have the same lien upon the property chargeable with the taxes advanced by him, as the territory would have if the taxes remained unpaid; and may proceed to collect the same for one year after such payment into the treasury, in the

Lien allowed to collector in certain cases.

same manner as other taxes are collected, notwithstanding the appointment of another collector.

Amount returned delinquent to be refunded.

SEC. 47. If any collector shall, within one year after he has paid into the treasury the full amount of territorial taxes in the tax book, publish such delinquent list as above directed, and return the same to the county court, the amount properly returned delinquent shall be allowed to him by the court and paid out of the territorial treasury.

Indictment against collector.

SEC. 48. If any collector shall collect taxes when none are due, or shall wilfully exact or demand more than is due, he shall be indicted and fined in any sum not less than fifty dollars, and may also be removed from office.

ARTICLE IV.

Of the county revenue.

§ 1. Power of tribunal to levy taxes.
2. When tax book is made out, rate to be fixed.
§ 3. To be entered of record.
4. To pay amount into the treasury.
5. Penalty for failure.

Power of tribunal to levy taxes.

SECTION 1. The several county tribunals are empowered to levy such sum as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for territorial purposes; but the county tax shall in no case exceed the territorial tax on the same subject of taxation, more than *one hundred per centum* for the same time.

When tax book is made out, rate to be fixed.

SEC. 2. As soon as may be after the tax book of each county shall be corrected and adjusted according to law, the county tribunal shall ascertain the sum necessary to be raised for county purposes, and fix the rates of taxes on the several subjects of taxation, so as to raise the required sum and cause the same to be entered in proper columns on the tax book.

To be entered of record.

SEC. 3. Whenever the county tribunals shall ascertain the amount to be raised for county purposes, and fix the rates of county taxes, they shall cause the same to be entered of record, so as to show the whole amount to be raised, and the proportion which the rates of the county tax bear to the rates of the territorial tax upon the same subject of taxation.

To pay amount into treasury.

SEC. 4. Every collector of the revenue having made settlement, according to law, of county revenue by him collected or received, shall forthwith pay the amount found due from him into the county treasury, and the clerk of the county tribunal shall give him a receipt therefor, under the seal of the court.

Penalty for failure.

SEC. 5. Every collector who shall fail to make payment of the amount due from him on settlement, in the time and manner prescribed in the preceding section, shall forfeit two and a half per centum a month on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid until actual payment.

ARTICLE V.

Of the sale of lands for taxes.

§ 1. Delinquent lists to be examined by tribunals.
2. Collectors to return said lists.
3. When such lands may be redeemed.
4. Of duplicate receipts, &c.
5. Land to be sold; proceedings.
6. In what manner list to be arranged.
7. Lands to be advertised, when.
8. When land and lots may be redeemed.
9. When sale is to be made.
10. Duty of collectors.
11. Duty of register.
12. Collector to pay into treasury.
§ 13. Collector may reserve the same, when.
14. Lands may be redeemed, when.
15. *Quietus* may be granted, when.
16. Redemption money may be refunded.
17. Of land unredeemed within two years.
18. Deed to be *prima facie* evidence.
19. When minor heirs apply to redeem, provisions.
20. Duty of printer.
21. Lands on which taxes are due to be sold.
22. Compensation to printers and officers.
23. Fees to be paid into the treasury.
24. Collector to designate the land sold.

Delinquent lists to be examined by tribunals.

SECTION 1. At the term of the county tribunals at which the delinquent lists are annually to be certified, as provided in the forty-second section of the third article of this act, the said tribunal shall examine and compare the lists of lands and town lots on which the tax remains due and unpaid, and if any such lands or town lots have been assessed to more persons than one, or more than once to the same person, or if the legal subdivision be incorrectly described, in all such cases the said tribunal shall correct such errors by the best means in their power, and shall cause the lists so corrected to be certified to the register of lands, under the seal of the court.

Collectors to return said lists.

SEC. 2. The several collectors shall return the said lists to the register of lands, immediately after the first Monday in December of each year, which shall be filed by said register in his office, to be disposed of as hereinafter provided.

When such lands may be redeemed.

SEC. 3. The lands and town lots so returned may be redeemed at any time prior to the first day of June next succeeding the date of this return, by paying into the territorial treasury the amount of taxes and costs due thereon, with interest at the rate of *fifteen per centum* per annum; and upon full payment of the amount of tax, costs and interest, the register shall grant the party a *quietus*, and shall mark the same paid on the lists in his office.

Duplicate receipts, &c.

SEC. 4. Upon the payment of money into the treasury, as provided in the next preceding section, the treasurer shall issue duplicate receipts for the amount, which shall be delivered to the register, one of which he shall file in his office, and deliver the other to the auditor of public accounts, who shall charge the treasurer with the amount.

Land to be sold for non-payment; proceedings.

SEC. 5. On the first Monday of June, annually, next succeeding the returns required to be made by the second section of this article, the register of lands shall cause all the lands and town lots remaining unredeemed in his office, or which may have been bought in for the territory or forfeited to the territory, to be advertised in some newspaper published in the city of Lecompton, to be sold on the first Monday in October next thereafter, at the place of holding courts in the respective counties, and the register shall immediately transmit three copies of said advertisement to the collector of each county in which any of the said lands lie, one of which the collector shall set up at the court-house door of his county, one shall be placed in the county court clerk's office, subject to the inspection of all persons without fee, and the other shall be safely preserved in the office of the county clerk; and he shall also file two copies with the auditor of public accounts, to be by him preserved in his office, and the auditor shall thereupon charge the several collectors with the amount appearing to be due on the lands and town lots advertised to be sold in their respective counties.

In what manner list to be arranged.

SEC. 6. The lists of lands and town lots to be advertised, as required in the next preceding section, shall be arranged by the register, in regular numerical order, beginning at the lowest number of range and township in each county, and in each township commencing with section one and running to twenty-six, and in like manner with town lots; and each and every name in which any tract of land or town lot may have been returned, shall be set opposite such tract of land or town lot.

Lands to be advertised, when.

SEC. 7. On the first Monday in July, annually, or as soon thereafter as the advertisements mentioned in the fifth section are received by the collectors, they shall cause the lands and town lots lying in their respective counties to be advertised for sale for the taxes, interest and costs, on the first Monday of October next thereafter, in some newspaper published in the county where the lands lie; or if there be no paper published in the county, then by three written or printed advertisements, put up at the most public places in each township in the county.

SEC. 8. Said lands and town lots may be redeemed at any time after the lists are received by the collector, prior to the sale, by the party paying to the proper collector the full amount of taxes, costs and interest, at the rate of *fifteen per centum* per annum, and the collector shall thereupon issue his receipt therefor, as provided in the twenty-eighth section of the third article of this act.

When lands and lots may be redeemed.

SEC. 9. All of said lands and town lots remaining unredeemed on the first Monday in October, annually, shall be publicly exposed to sale by the collectors, for the taxes, interest and costs due thereon, before the court-house door of the county, and shall sell so much of each and every tract as shall be sufficient to pay the taxes, interest and costs, the sales to be continued from day to day (Sundays excepted) until all the lands and town lots are offered; and if no person will pay the taxes, interest and costs due on any tract of land or town lot when offered for sale, the collectors shall bid the same in for the territory; and if the bidder who is declared the purchaser of any tract of land does not pay for the same, the land shall be considered as bid in for the territory, and shall not again be offered for sale by the collector at that sale; and upon full payment of the amount for which any tract of land or town lot is sold, the collector shall grant the party a certificate therefor.

When sale is to be made, &c.

SEC. 10. The collectors shall make out two fair copies of all lands and town lots by them exposed to sale, annually, stating therein the name of the owner, the legal subdivision by parts of sections, number of township and range; or, if a town lot, the name of the town and the number of the lot and block, and to whom sold, whether to an individual or the territory; the precise quantity and part of each tract of land or town lot sold, and the amount of taxes, interest and costs for which it was sold; and shall file one of said lists with the clerk of the county court, and shall return the other, immediately after the first Monday in December next after such sale, to the register of lands, to be by him filed in his office; the lists to be verified by the affidavit of the collector annexed thereto, stating that the same is a true and correct account of the sales by him made at the time therein mentioned, to be sworn to and subscribed before the clerk of the county court, and attested by said clerk with his seal of office affixed thereto.

Duty of collectors.

SEC. 11. The register of lands shall provide a book to be called "Register of lands sold for taxes," in which the register shall enter all lands and town lots returned to him as sold for taxes, which entry shall be a transcript of the list returned by the collectors, as directed in the next preceding section, leaving

Duty of register.

at the end of each line three columns in blank, of sufficient space to insert the names of persons who may redeem such lands or town lots, the date of the redemption, and the amount of the redemption money.

Collector to pay into treasury.

SEC. 12. The collectors shall, at the time of making their annual settlement with the auditor of public accounts, on the first Monday in December, pay into the territorial treasury the whole amount of the proceeds of the sales made under the provisions of this act, with the exception of such charges and fees as they may be allowed by law for advertising and selling, and upon such payment, the auditor shall credit such collectors with the amount by them paid into the treasury.

Collector may reserve the same, when.

SEC. 13. Whenever it shall appear to the satisfaction of the collector that the tax has been paid on any tract of land or any town lots which he may have advertised for sale, he may reserve the same from sale, and shall so state on the list of sales furnished by him to the register of lands, as required by the tenth section of this article, to enable the said register to correct the same on his books.

Lands may be redeemed, when.

SEC. 14. Any lands or town lots which may be sold under the provisions of this act for taxes, interest and costs due thereon and unpaid, may be redeemed at any time within two years from the date of such sale, by the claimant, or any other person for him, paying to the territorial treasurer, for the use of the purchaser or purchasers, double the amount of taxes, interest and costs for which the same may have been sold; lands that may belong, in whole or in part, at the time of such sale, to a minor or minors, may be redeemed at any time before the expiration of one year from the time the youngest of such minors shall become of full age. No person shall be permitted to redeem any lands sold, unless he shall at the time pay all taxes which may have become due subsequent to the sale, with interest thereon from the time they become due at the rate of ten per cent. per annum, if the person redeeming was at the time of the sale a minor, and in all other cases at the rate of fifty per cent. per annum; and if any purchaser of lands sold for taxes shall suffer the same to be sold before the expiration of the two years allowed for the redemption of the same, the persons whose lands have been thus sold may redeem the same from both sales by paying to the treasurer, for the use of the first purchaser, the taxes, interest and costs of the first sale, and for the use of the second purchaser double the amount of the taxes, interest and costs for which the same may have been sold at such second sale.

Quietus may be granted, when.

SEC. 15. When any lands shall be redeemed as provided in the next preceding section, the register of lands shall grant the party a *quietus* therefor, and the auditor shall charge the treasurer with the amount paid him, and shall credit the proper collector's account in his office with the same.

Redemption money to be refunded, when.

SEC. 16. When any redemption money is paid into the treasury, for the use of purchasers of lands or town lots, under the provisions of this act, the auditor shall draw his warrant on the treasurer for the amount in favor of the person entitled thereto, which shall be paid out of any money in the treasury not otherwise appropriated.

Land unredeemed within two years.

SEC. 17. Where lands or town lots are sold under the provisions of this act, and shall not be redeemed within two years, as provided in the fourteenth section of this article, the register of lands shall execute good and sufficient deeds of conveyance to all persons entitled thereto, conveying the lands or town lots in such deeds.

Deed to be *prima facie* evidence.

SEC. 18. Such deed so executed shall, without any further proof, be received as evidence in all courts in which the title to any land or town lots, purporting to be conveyed by the same, shall be brought in question, and shall be considered *prima facie* evidence of title in the purchaser, upon his showing that the foregoing provisions of this article, which authorize the execution of such deed, have been complied with.

When minor heirs apply to redeem, provision.

SEC. 19. When any person or persons shall apply to the register to redeem any land or town lots sold for taxes under the provisions of this act, alleged to have belonged to minor heirs, it shall be incumbent on the person or persons so applying to produce to said register the certificate of the clerk of the county tribunal of the proper county, under his seal of office, setting forth that it appears from the records of said court, that such person or persons are the legal heir or heirs of the former owner of said tract or tracts of land, or town lots, and that such former owner died before the said tract of land or town lots were sold for taxes, and also the true age of the youngest of said heirs; and in cases where there has been no will, nor any settlement of such intestate's estate, before the county tribunal to which such jurisdiction belongs, such heir or heirs shall go before some court of record and exhibit proof of his, her or their heirship, minority and age; and on producing the certificate of the clerk of such court, and his seal of office, to the above facts, such heir or heirs shall be entitled to all the rights of redemption as are hereinbefore allowed; and in all cases when such certificate shall be made without this territory, it shall be authenticated according to the laws of the United States, and the certificate containing the evidence on which the right to redeem is predicated shall in every case be delivered to the register of lands, and by him filed and preserved in his office.

Duty of printer.

SEC. 20. The printer or printers of the newspapers in which the advertisements required by the fifth section of this article are inserted, are hereby required, immediately after the same shall have been published, to deposit two copies of the paper with the auditor of public accounts, two copies with the territorial treasurer, two copies with the secretary of the territory, and shall transmit by mail two copies to the clerks of the county tribunals of the several counties in the territory, to be by the said auditor, treasurer, secretary of state, and clerks, safely preserved in their offices; the said printer or printers shall annex a certificate to each of said copies, with the signature or signatures of such printer or printers, stating that such advertisement was duly published, and certified copies of such advertisements, authenticated as aforesaid, shall be *prima facie* evidence of the facts they contain, in all courts of justice in this territory.

Lands on which taxes are due, to be sold, &c.

SEC. 21. All lands and town lots which may have been returned to the register of lands, for the non-payment of taxes for the year one thousand eight hundred and forty-three and one thousand eight hundred and forty-four, or any former year, and which shall remain unredeemed on the first Monday in June next, shall immediately thereafter be advertised for sale by the register of lands, to be sold on the first Monday of October next, and shall be proceeded on in all respects, and subject to all the liabilities and privileges as other lands hereafter to be returned, as provided in the preceding part of this article.

Compensation to printers and officers.

SEC. 22. The following charges and fees shall be allowed to the printers and officers for services rendered under the provisions of this act, viz: To the register of lands, for each tract advertised, *ten cents;* for granting a quietus, when any tract of land or town lot is redeemed, *twenty-five cents;* for entering each tract in the "register of lands sold for taxes," *five cents;* for each deed, duly executed and acknowledged, *fifty cents;* the printer at the seat of government, for each tract contained in the advertisement, *six cents;* the printer in each county, for advertising the lands in the county, for each tract, *ten cents;* collectors, for advertising, when advertised in newspapers, for each tract, *five cents;* when by putting up advertisements in townships, *ten cents* on each tract, and also *twenty-five cents* for each tract of land or town lot that may be redeemed, and the sum of *twenty-five cents* on any piece of land or town lot sold by them.

Fees to be paid into the treasury.

SEC. 23. All fees received by the register of lands, under the provisions of this act, shall be paid into the territorial treasury, and the register shall render to the auditor of public accounts a statement, verified by oath, of all fees received.

Collector to designate the land sold, &c.

SEC. 24. The collector, at the time of exposing the land for sale, under the ninth section of the fourth article, shall designate from what part of the tract or lot the portion sold is to be taken, and the deed, when made, shall designate the said portion accordingly.

ARTICLE VI.

Of the duties of collectors when their terms of service expire.

§ 1. Collector to pay over all moneys to his successor.
2. Duty of clerks and auditor.
3. Successor to pay money into treasury.
§ 4. Receipts to specify.
5. Tribunal to correct assessments, &c. Proviso.

Collectors to pay over all moneys to their successors.

SECTION 1. At the expiration of the term for which the several collectors are elected (or as soon thereafter as their successors shall have been qualified), they shall pay over all moneys which may be in their hands, due the territory, to their successors in office, and take duplicate receipts therefor; one of which receipts they shall file with the clerk of the county tribunal of their respective counties, and retain the other for their own benefit.

Duty of clerks and auditor.

SEC. 2. It shall be the duty of the county clerks, as soon as they receive the receipts above mentioned, to certify the same to the auditor of public accounts, stating the amount of such receipts; and it shall be the duty of the auditor, upon the receipt of the same, to place the amount thus certified to the credit of the collector whose term of service has expired, and charge the same to his successor in office.

Successor to pay said money into the treasury

SEC. 3. It shall be the duty of the collectors charged with moneys mentioned in the next preceding section, to pay the same into the territorial treasury on the first Monday in December next thereafter.

Receipts to specify.

SEC. 4. In the receipts mentioned in the first section of this article shall be specified particularly on what account the moneys mentioned were received, whether from taxes on land, or from merchants, grocers or peddlers' licenses, or from other sources.

Tribunal to correct assessment, &c.

SEC. 5. The several county tribunals are hereby authorized and empowered to hear and determine all allegations of erroneous assessments of lands for taxes made prior to, or which may be made after the passage of this act; and in all cases where it shall appear that lands have been erroneously taxed, either by having been assessed to more persons than one, or more than once for the same year to the same person, or if the land was not subject to taxation, in all such cases the said tribunal shall order the same to be corrected on the books of the proper assessor, and shall cause the clerk to certify the same to the register of lands, whose duty it shall be to make the corrections on the books in his office; *provided*, that no money shall be drawn out of the territorial treasury by virtue of the above provisions of this act.

Proviso.

This act to take effect and be in force from and after its passage.

CHAPTER 138.

REVENUE.

An act supplemental to an act to provide for the collection of the revenue.

§ 1. Sheriff to collect poll tax before first Monday in October, 1855.
§ 2. Duty of sheriff in relation thereto.
§ 3. Duty of the clerks.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Sheriff to collect poll tax, before first Monday in October, 1855.

SECTION 1. That in addition to the provisions of an act, entitled, "An act for the collection of the revenue," that the sheriff of each and every county shall, on or before the first Monday of October, A. D. 1855, collect the sum of one dollar as a poll tax from each person in the said territory of Kansas, who is or may be entitled to vote in said territory, as provided in said act to which this is supplementary.

Duties of sheriff in relation thereto.

SEC. 2. The sheriff of each county shall, within ten days after the said first Monday in October, A. D. 1855, make out and file in the office of the clerk of his county, a list of all persons who have paid the tax named in the first section of this act, with the amount paid by each person, which list shall be verified by the oath or affirmation of said sheriff.

Duties of the clerk.

SEC. 3. The clerk of each county shall, within five days after receiving the said list from the said sheriff, transmit to the auditor of public accounts a certified statement of the amount received by the sheriff of the county, as poll tax under this act, in order that the same may be charged to and be accounted for by said sheriff, as other revenue is required by law to be accounted for; and the sheriff of each county shall be required to pay the said revenue into the treasury on or before the first Monday in December, eighteen hundred and fifty-five.

This act to take effect and be in force from and after its passage.

CHAPTER 139.

ROADS AND HIGHWAYS.

An act for the opening and repairing of public roads and highways.

§ 1. All county roads to be opened and repaired according to this act.
2. Power given to county tribunal to establish or alter roads.
3. Width of such roads.
4. In what condition roads to be kept.
5. Bridge worth more than fifty dollars, not to built by overseer.
6. In what manner a new road to be petitioned for.
7. Notice of intended application to be given.
8. On hearing the cause, the court may grant the prayer of such petition, and appoint commissioners.
9. Copy of the order to be given to the sheriff.
10. Sheriff to deliver to commissioners a copy of such order.
11. Sheriff shall return the original order.
12. Commissioners to take oath and proceed to view the route, &c.
13. Report and proceedings of the commissioners.
14. When the inhabitants remonstrate, commissioners appointed, and proceed as in first instance.
15. If report is against the road, same shall not be opened; otherwise, if favorable.
16. Any person injured by opening such road, how he shall proceed; viewers to be appointed.
17. Viewers shall meet and take an oath.
18. When they shall assess damages of injured person.
19. If damages be for injured person, county to pay costs; if none are given, he pays costs.
20. Applications, how and to whom made for permission to turn road, for the purpose of cultivating land.
21. Three commissioners to be appointed in such cases; report of their proceedings, how and when to be made.
§ 22. Upon report being made, in what cases court to vacate that part of road, &c.; commissioners' report to be recorded.
23. Twelve householders may petition to to vacate a road.
24. Petition to be publicly read on first day of court to which it is presented, and matter continued.
25. At the next term, shall again be read, and if no remonstrance of twelve householders, same to be vacated.
26. If remonstrance, how court to proceed.
27. Judgment on the report to be conclusive.
28. Justices of the peace to be appointed to lay off their townships into road districts.
29. Such justices to allot the hands.
30. Clerk to make out a copy of order of appointment of justice.
31. Sheriff shall deliver a copy of such order to the justice, and make return.
32. When county tribunal to appoint overseer.
33. Clerk to make out such order of appointment.
34. Sheriff to serve such order.
35. Overseer to apply to allotting justice for list of hands.
36. Justice to return a list of allotted hands to court.
37. No person to work on more than one road division at a time.
38. Justice may alter road division, and re-allot hands to open new road.
39. Certificate of such re-allotment or alteration to be transmitted to the court.
40. How long an allotting justice to act as such.
41. Who shall work on roads.
42. How often overseer to call out the hands.
43. How notice is to be given to the hands to work.

§ 44. Penalty on hand not working.
45. List of delinquent hands to be given to justice.
46. Justice to bring suit in name of overseer, to use of road district, against delinquent.
47. Provision as to payment of costs.
48. What tools and sort of team entitle a hand to credit of three days' work.
49. Privilege given overseer to enter adjacent lands for certain purposes.
50. When the owner of such land feels aggrieved, how to get redress.
51. When new road established, county tribunal to appoint an overseer thereof.
52. Such overseer to have notice of appointment.
53. The allotting justice to give such overseer a list of hands.
54. Such hands to have notice, and to be subject to all the duties of other hands.
55. Discretionary power given justice in making such allotment.
56. New road being opened, to be kept in repair like other roads.
57. Finger-board kept at forks of roads.
58. Compensation for erecting finger-board.
59. Penalty for obstructing road.
60. Additional penalty for continuing such obstruction.
61. Penalty for injuring sign-board.
62. Penalty on overseer for neglect of duty, &c.
§ 63. No person required to act as overseer more than one year.
64. The paying a fine for failing to accept, shall excuse him for one year.
65. Penalty on sheriff, clerk and justice, for neglect of duty.
66. Such penalties to be recovered by indictment, and paid into county treasury.
67. Such fine to go to credit of road and canal fund.
68. The fines imposed on other persons to be recovered by action of debt.
69. Fines against minors, apprentices and slaves, to be recovered of guardian or master.
70. When constable shall collect any fine, &c., to pay same to justice of the peace.
71. Such justice to pay same over to road division.
72. Such justice to report receipt of money to county tribunal.
73. Overseer to apply fines received by him to repairing roads.
74. Such overseer to settle with county tribunal.
75. List of overseers to be laid before grand jury by clerk.
76. What facts shall be necessary to be proven against overseer, on an indictment.
77. This act to be given in special charge to the grand jury by the district court.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

County roads, how opened and repaired.

Section 1. All county roads shall be opened and repaired according to the provisions of this act.

Power of the county tribunal to establish or alter roads.

Sec. 2. The tribunal transacting county business shall have power to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road, or any part thereof, in their respective counties.

Width of county roads.

Sec. 3. All county roads shall be cut out not less than twenty feet nor more than forty feet wide, to be determined, from time to time, by the tribunal transacting county business ordering the opening of the same, according to the supposed utility of such road.

In what condition roads to be kept.

Sec. 4. All county roads shall be cleared of trees which may incommode horsemen or carriages, and no stump in any county road shall exceed eight inches in height, and wet grounds and small water-courses shall be causewayed or bridged in such manner as to enable horsemen and carriages to pass with safety.

Bridge not to be built, when, &c.

Sec. 5. No bridge shall be built by the overseer and hands, the building of which shall be worth more than fifty dollars.

SEC. 6. Applications for new county roads shall be made by petition, signed by at least twelve householders of the township or townships in which such road is desired, three of whom shall be of the immediate neighborhood, specifying the proposed beginning, course, and termination thereof, with not more than two points, named in such petition, on the direction of said road.

In what manner new road to be petitioned for.

SEC. 7. Notice of such intended application shall be given by advertisements, put up in two or more of the most public places in such township or townships, at least twenty days prior thereto.

Notice of intended application to be given.

SEC. 8. The tribunal, when such petition is presented and publicly read, and upon proof of notice as required by the next preceding section, shall appoint three disinterested householders of the county as commissioners.

Court may grant prayer of petitioner, when.

SEC. 9. The clerk of such tribunal shall, within ten days after the appointment of such commissioners, deliver to the sheriff of the county a copy of the order of such appointment, with an endorsement thereon of the time of delivery.

Copy of the order to be given to the sheriff.

SEC. 10. The sheriff shall, within ten days thereafter, notify the persons appointed, by delivering to each of them a copy of such order, or by leaving such copy at the usual place of abode of such commissioner, with some white member of his family over the age of fifteen years.

Sheriff to deliver to commissioner a copy of such order.

SEC. 11. The sheriff shall return the original order of appointment to the clerk who delivered it to him, with his certificate thereon, showing how he executed the same, before the next regular term of the county tribunal.

Shall return the original order.

SEC. 12. The commissioners, or a majority of them, having taken an oath or affirmation faithfully and impartially to discharge their duties, shall proceed to view the route proposed, and to lay out and mark such road on the best ground that can be obtained, not running through any person's inclosure without the consent of the owner, unless a good way cannot otherwise be had.

Commissioners to take an oath, &c

SEC. 13. The commissioners, or a majority of them, shall make and certify a copy of their proceedings to the ensuing regular session of the tribunal transacting county business, specifying through whose lands said road will pass, and whether the owner and tenant of said land gave his, her, or their consent to the location of said road. If the consent of the owners and tenants of said land shall not be certified by the commissioners, the tribunal shall order summons to be issued to the owners and tenants of the land through which the same is proposed to be conducted, if to be found within the county; if not, then to their agents therein, if any they have, to show cause why such road shall not be opened. It shall be the duty of the clerk of said tribunal, within ten days, to put all summons hereby authorized

Report and proceedings of commissioners.

to be issued, into the hands of the sheriff of his county, who shall execute the same in the manner prescribed in the tenth section of this act; upon the return of such summons *or summonses* executed, if no objection be made, such road shall be established and opened in pursuance of the provisions of this act.

Commissioners to be appointed on remonstrance.

Sec. 14. If any ten householders of any township or townships through which the proposed road may run, shall object at such time, by way of remonstrance, to the utility of such road, other commissioners shall be appointed, who shall proceed in like manner as the commissioners appointed in the first instance.

Shall proceed, how.

If report is against the road, it shall not be opened; otherwise, if favorable.

Sec. 15. If a majority of such commissioners report against the utility of such road, the same shall not be established, and the petitioners shall pay the costs; but if they report favorably thereto, the objectors shall pay the costs, and the road shall be ordered to be opened, and the proceedings recorded.

Any person injured by opening such road, how he shall proceed.

Sec. 16. If any person through whose land such road may run, shall, on the day of the return of the summons *or summonses* executed, which are authorized to be issued by the thirteenth section of this act, present a remonstrance to the tribunal, setting forth his grievances, the tribunal shall appoint three disinterested householders, and a day and place for them to meet.

Viewers to be appointed.

Viewers shall meet and take an oath, when.

Sec. 17. Such householders, having had five days' notice from any person interested, shall meet and take an oath or affirmation faithfully and impartially to discharge the duties assigned them.

When they shall assess damages for objector.

Sec. 18. They shall then, or on any other day prior to the next session of the tribunal transacting county business to which the majority may adjourn, proceed to review the proposed road, and assess the damages, if any, which such objector will sustain by reason of such road being opened and continued through his land; and shall report their proceedings to the next term of said tribunal.

Costs, how regulated and by whom paid.

Sec. 19. If a majority of such reviewers shall assess damages in favor of the objector, such damages and costs shall be paid out of the county treasury; but if the majority report that the objector will sustain no damages, such objector shall pay the costs.

Application for permission to turn road, how and by whom made.

Sec. 20. Any person wishing to cultivate lands through which any road may run, may petition the tribunal transacting county business, or any member thereof, in vacation, for permission to turn such road on his own land, or on the land of any other person consenting thereto, at his own expense.

Commissioners to be appointed; their report, how and when to be made.

Sec. 21. The tribunal or members shall thereupon appoint three commissioners, disinterested householders, who shall, after taking an oath or affirmation to discharge the duty faithfully and impartially, proceed to view the same, and report the respective distances and situation of the ground of the established and proposed road, at the first term of the tribunal thereafter.

Sec. 22. If, upon the report, the county tribunal be satisfied that the public will not be materially injured by such change, it shall order the same; and upon satisfactory proof of such road being opened in such manner, or to be equally convenient to travelers, the tribunal shall make an order vacating so much of the former road as lies between the different points of intersection, and record the report of the commissioners: *Provided, however*, that before any application to the county tribunal for any change in any established road, in whole or in part, shall be heard, said tribunal shall be satisfied that notice of such application has been given at least twenty days before the making thereof, by not less than three advertisements set up in the neighborhood of the road proposed to be changed.

Upon report being made, in what cases tribunal to vacate that part of road, &c.

Commissioners' report to be recorded.

Proviso.

Sec. 23. Any twelve householders of the township or townships may make application, by petition, to the county tribunal, for the vacation of any county road as useless, and the repairing thereof an unreasonable burthen to such township or townships.

Twelve householders may petition to vacate a road.

Sec. 24. The petition shall be publicly read on the first day of the session at which it is presented, and the matter continued, without further proceedings, until the next term.

Petition to be read on first day of term and continued.

Sec. 25. At the next succeeding regular session, the same shall be again publicly read on the first day, and, if no remonstrance be made thereto in writing, signed by twelve householders, the tribunal may proceed to vacate such road, or any part thereof, and the costs shall be paid by the petitioners.

Proceedings at next term, if no remonstrance.

Sec. 26. If such remonstrance be made, the tribunal shall appoint three commissioners, who shall be governed in all respects by the provisions of this act regulating the proceedings of commissioners appointed upon applications for new roads.

If remonstrance, how court to proceed.

Sec. 27. The decision of the tribunal upon the report of the commissioners, in such cases, shall be conclusive in the premises.

Decision on report to be conclusive.

Sec. 28. The tribunal transacting county business of each county shall, as often as it may become necessary, appoint one or more justices of the peace in each township in the county, whose duty it shall be to lay off the several roads therein into road districts of convenient lengths, numbering them, and make returns of such divisions, with their numbers, to the tribunal to be held next after their appointment.

Justices of the peace to be appointed to lay off their townships into road districts.

Justices to allot the lands.

Sec. 29. It shall be the further duty of such justices to allot the hands, subject to work on roads, among the overseers of the several road districts.

Clerk to make out copy of order of appointment.

Sec. 30. The clerk of the county tribunal transacting county business shall, within five days after the appointment of any justice of the peace to lay off road districts and allot hands, make out and deliver to the sheriff of the county a copy of the order of appointment, with an endorsement thereon of the time of delivery.

Sheriff shall deliver a copy of such order to justice and make return.

Sec. 31. The sheriff shall, within ten days after receiving such copy of the order of appointment, notify the person appointed, by delivering him a copy of such order, and make return thereof, with his official endorsement, to the clerk, to be filed in his office.

When tribunal to appoint overseer.

Sec. 32. The tribunal transacting county business shall, at their first term after the return of the justices appointed to make road divisions and districts, appoint some suitable person, being a householder, and living on or near such road division, to oversee the opening and repairing of the same, who shall hold his office one year, and until he informs such tribunal of his intention to serve no longer, and satisfy such tribunal that his road is in good order.

Clerk to make out order of appointment.

Sec. 33. The clerk of such tribunal shall, within five days thereafter, make out a copy of such order of appointment, and place the same in the hands of the sheriff of his county, with an endorsement thereon of the time of delivery.

Sheriff to serve such order, when and how.

Sec. 34. The sheriff shall, within ten days after receiving such copy of the order of appointment, serve such overseer with a notice thereof, by giving him a copy, or by leaving such copy at the usual place of abode of such overseer, with some white person of his family above the age of fourteen years, and the sheriff shall, within six days thereafter, return such copy of the order of appointment, with the service thereon endorsed, to the clerk, to be filed in his office.

Overseer to apply to allotting justice for list of hands.

Sec. 35. Such overseer shall, immediately on receiving his appointment, apply to the allotting justice of the township for a list of hands to work his road division: such justice shall, at all times, have due regard to the length of the road division, the probable amount of labor necessary on the same, and the right and justice in the whole matter.

Justices to return list to tribunal.

Sec. 36. Such justice or justices shall, immediately thereafter, make out and return a certified list of all such allotments, by him or them made, to the clerk of the tribunal transacting county business, who shall file the same in his office.

Sec. 37. No person shall be required to work on more than one road division at the same time, except in cutting out new roads.

No person to work on more than one road division

Sec. 38. Such justice or justices, as may have been appointed to lay off road divisions and allot hands, may, whenever to them it shall seem just and expedient, alter any road division in their township, and re-allot the hands, so as to equalize the labor of opening and repairing the same.

Justice may alter road division and re-allot hands to open new roads

Sec. 39. Whenever any alteration in any road division or re-allotment of hands shall be made, the justice or justices making the same shall immediately transmit a certificate of such alteration or re-allotment to the clerk of the tribunal transacting county business of the proper county, who shall file the same in his office.

Certificate of such re-allotment or alteration to be transmitted to the court.

Sec. 40. The justice or justices who may be appointed to lay off road divisions and allot hands, shall continue to discharge their duties for one year, and until he or they inform the proper county tribunal of their intention to serve no longer; in which case the tribunal shall appoint some other justice or justices to discharge such duties, unless it appear that there are no justices in such township who have not served within the preceding year, in which event he or they shall not be discharged.

How long an allotting justice to act as such.

Sec. 41. All able-bodied male inhabitants, between the ages of sixteen and forty-five years, having resided in the territory sixty days, and in the road district one month, shall be subject to work on county roads.

Who shall work on roads.

Sec. 42. As often as any road division shall need opening and repairing, the overseer shall call out the hands allotted to him, and oversee, open and repair the same.

How often overseer to call out hands.

Sec. 43. A verbal notice to any hand, or, if a son, residing with his father, ward, slave or apprentice to his father, guardian or master, by such overseer himself, or by any white person having written authority from such overseer, or a written notice left at the place of abode of the party, with some white person of the family over the age of fourteen years, shall be sufficient.

How notice is to be given to the hands to work.

Sec. 44. Every person made liable to work on a road, who fails, without reasonable excuse to attend, either in person or by satisfactory substitute, with proper tools or instruments, having had two days' previous notice thereof, or, having attended, shall disobey the reasonable orders of such overseer, shall forfeit and pay one dollar for each day he may fail to attend, or two dollars for each day he may attend and fail to work with due diligence.

Penalty on a hand for not working.

Sec. 45. Each overseer shall place a list of all such delinquents as have failed to attend, or, having attended, failed or re-

List of delinquent hands to be given to justice.

fused to obey the reasonable orders of the overseer, in the hands of some justice of the peace of the township.

Suit against delinquent, how brought.

SEC. 46. Such justice shall immediately issue a summons, in the name of the overseer, to the use of his road district, against each delinquent, and proceed therein to judgment and execution as in ordinary cases.

Costs, how paid.

SEC. 47. If judgment be given against such delinquent, he shall pay the costs; if against the overseer, the costs shall be paid out of the funds of the road district.

What entitles a hand to credit of three days' work.

SEC. 48. Every person who shall, at the request of the overseer of his road district, furnish a plough, cart or wagon, with a pair of oxen or horses, and driver, shall, for each days' work of such team and driver, receive a credit of three day's work on his liability to work on such road, or such reasonable compensation in money as such overseer may agree to pay him.

Privilege of overseer to enter upon adjacent lands

SEC. 49. Every overseer of a road district, or other person by his order, may enter upon any lands adjoining or near his road, and open such ditches as may be necessary, and cut and carry off from the nearest unimproved lands, such wood or trees as may be necessary for making and repairing his road, or any bridge or causeway over any water-course or wet land, doing as little damage as may be to the owner of such land.

If owner of such land be aggrieved, how to obtain redress.

SEC. 50. If any person feel himself aggrieved by the cutting of such timber, such person may apply to the tribunal transacting county business of the proper county, who shall appoint three disinterested householders of the county, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any, which shall be paid out of the county treasury.

When a new road is established, county tribunal to appoint an overseer thereof.

SEC. 51. Whenever a new road shall be laid out and established, according to the provisions of this act, the tribunal transacting county business shall appoint an overseer in each township through which, or a part of which, such road may run, having the qualifications of an overseer of a road district, to cut out and open the same. (*b*)

Such overseer to have notice of appointment.

SEC. 52. Such overseer, and the alloting justice or justices of the township, shall be notified of the appointment, in the time and manner in this act required, in cases of overseers of road districts. (*c*)

Allotting justice to give such overseer a list of hands.

SEC. 53. The allotting justice or justices of the township or townships, through which such new road may run, shall make out and deliver to such overseer, a list of hands for the particular purpose of cutting out and opening such new road.

(*b*) *Vide* section thirty-two of this article.

(*c*) *Vide* sections thirty-three and thirty-four of this article.

Such hands to have notice and be subject to the duties of other hands.

SEC. 54. The hands thus allotted shall be notified, and subject to the same penalties for a failure or refusal to work, in the same manner and to the same extent, as hands allotted to work on road districts. (*d*)

Discretionary power of justice in making such allotment.

SEC. 55. The justice or justices, in making such allotment, shall have power to allot such number of hands residing in their township, subject to work on roads, as they may deem necessary, having due regard to the amount and kind of labor to be performed in opening such road.

New road, how kept in repair.

SEC. 56. When a new road shall be opened, it shall be districted and kept in repair in the same manner as other county roads.

Finger-board kept at forks of road.

SEC. 57. Every overseer shall erect and keep a post at every fork of the road, or cross-road, in his road district, unless a suitable tree be found at the proper place, to which shall be affixed a finger-board, containing a legible inscription directing the way and noting the distance to the next remarkable place on the road.

Compensation for erecting finger-board.

SEC. 58. Every such road overseer shall be entitled to the sum of one dollar for every such post or sign so erected, to be paid out of any money in hand belonging to his road district, or out of any money in the county treasury arising under this act.

Penalty for obstructing road.

SEC. 59. If any person shall obstruct any road unnecessarily, and to the hinderance of any passenger, such person shall forfeit and pay a sum not exceeding ten dollars.

Additional penalty for continuing such obstruction.

SEC. 60. The person making such obstruction shall, in addition to the penalty mentioned in the preceding section, forfeit and pay the further sum of one dollar for every day he shall suffer such obstruction to remain in or across such road.

Penalty for injuring sign-board.

SEC. 61. If any person shall demolish or deface any signboard, or remove the same, he shall forfeit and pay the sum of ten dollars.

Penalty on overseer for neglect of duty, &c

SEC. 62. If any road overseer shall wilfully fail or neglect to keep his road in good repair, or to put up a finger-board, or faithfully appropriate any moneys in his hands for the use of his road division, or in any manner fail to comply with the requirements of this act, or refuse to serve when appointed road overseer, he shall forfeit and pay the sum of ten dollars.

No person to act as overseer for more than one year.

SEC. 63. No road overseer shall be required to serve more than twelve months at any one time, if, at the end of that period, he shall discharge himself in the manner pointed out in the thirty-second section of this article.

(*d*) *Vide* sections thirty-seven, thirty-eight, forty-four, forty-five, forty-six and forty-seven of this article.

The paying of a fine for failing to accept, shall excuse him for one year.

SEC. 64. The forfeiture for failing to accept his appointment shall exempt such overseer from re-appointment for the term of twelve months from and after the date of its payment.

Penalty on sheriff, clerk and justice for neglect of duty.

SEC. 65. If any clerk of a tribunal transacting county business, sheriff, or justice of the peace, shall fail to perform the duties required of him by this act, he shall forfeit and pay not less than ten nor more than fifty dollars for each offence.

Such penalties, how recovered.

SEC. 66. The fines and forfeitures imposed by this act upon any road overseer, clerk, sheriff, or justice of the peace, shall be recoverable by indictment, and, when collected, shall be paid into the county treasury.

Fines to go to credit of road and canal fund.

SEC. 67. The county treasurer, upon the reception of any such fines and forfeitures, shall place the same to the credit of the road and canal fund of his county, and thereafter they shall become a part of such fund, for the uses and purposes of the same.

Fines imposed on other persons, how recovered.

SEC. 68. The fines and forfeitures imposed by this act upon persons other than a road overseer, clerk, sheriff, or justice of the peace, shall be recoverable by action of debt, in the name of the overseer, to the use of his road district, before any justice of the peace of the proper township.

Fines against minors, apprentices, &c., of whom recovered.

SEC. 69. When any minor, apprentice or slave shall become subject to a fine or forfeiture under this act, for trespass or delinquency, such fine or forfeiture shall be paid by the father, master or guardian, as the case may be, and the suit for the recovery thereof shall be instituted against such father, master or guardian.

Fine to be paid by constable to justice, when.

SEC. 70. Whenever any constable shall collect any fines or forfeitures imposed by this act, he shall pay the same into the hands of the justice of the peace by whom the judgment was rendered.

Justice to pay it over, to whom.

SEC. 71. Such justice shall receive the same, and pay it over to the overseer of the proper road division, and take his receipt therefor.

Justice to report receipt of such money to county tribunal.

SEC. 72. Such justice shall, moreover, immediately make his report of the amount of money received, and file the same, together with the receipts, in the county tribunal clerk's office of his county.

Fines, how to be applied by overseer.

SEC. 73. Every overseer receiving fines and forfeitures, shall appropriate the same to repairing and keeping in good order the road under his superintendence, and to the other purposes allowed by this act.

Overseer to settle with county tribunal.

SEC. 74. Such overseer shall settle with the tribunal transacting county business, once in every year, for the proper appropriation of the fines and forfeitures received by him, and shall expend the same in the manner allowed by this act before again calling out the hands to work on his road.

SEC. 75. The clerks of the several county tribunals shall lay before each grand jury that may be impanneled, and sit for and in their respective counties, a complete schedule of overseers of roads therein.

List of overseers to be laid before grand jury by clerk.

SEC. 76. Hereafter, when a bill of indictment shall have been preferred against the overseer of a road, for a failure to perform his duty as such, it shall only be necessary to prove on the part of the territory, in order to sustain such indictment: *First*, that prior to the time when the offence, in the indictment charged, is alleged to have been committed, the person indicted had assumed to act as such road overseer; *second*, that the road division, over which such person had assumed to act as overseer, was not kept in repair according to law: and where such person is to act as overseer, it shall be sufficient to prove by a certified copy of the record of the tribunal transacting county business, that such delinquent had been appointed and notified as such overseer.

What facts shall be necessary to be proven against overseer on an indictment.

SEC. 77. The judges of the several courts having criminal jurisdiction shall give this act in special charge to the grand jury, at each term of their several courts.

This act to be given in charge to grand jury.

This act to take effect and be in force from and after its passage.

CHAPTER 140.

ROADS TO BE PUBLIC HIGHWAYS.

An act to provide for the location of territorial roads in the territory of Kansas.

§ 1. All roads to be surveyed according to the provisions of this act.
2. Duty of commissioners.
3. Commissioners and surveyor to make return.
4. Return and plat to be signed by majority.
5. Shall make out account of expenses.
6. Roads not commenced shall be laid out by this act.
§ 7. Road, when located and established, to remain a public highway.
8. Compensation of officer and other persons.
9. Power and duty of commissioners.
10. No obstructions allowed.
11. Not to apply to roads terminating in same county.
12. All acts inconsistent with, declared inoperative.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That all territorial roads to be hereafter located and established, or which may have been located within this territory, shall be viewed, surveyed and established, and returns made

Roads to be surveyed according to the provisions of this act.

thereof, agreeably to the provisions of this act, within one year from the passage of the act by which said road or roads may be granted or authorized to be laid out respectively.

Duty of commissioners.

Sec. 2. The commissioners appointed to locate and establish any territorial road shall cause the same to be correctly surveyed and marked, from the beginning throughout the whole distance, by setting stakes in the prairie, at three hundred yards distance, and blazing trees in the timber; they shall establish mile posts, which shall be marked with a marking iron in regular progression from the beginning to the termination of said road, and shall also establish a post at every angle in said road, marking, as aforesaid, upon the same and upon a tree in the vicinity, if any there be, the bearing from the true meridian of the courses, beginning at said angle post set, as herein directed, and note the bearing and distance of two trees in opposite directions, if there be any in the vicinity, from each angle and mile post.

Commissioners and surveyor each to make return.

Sec. 3. The commissioners and surveyor of each road shall make a certified return of the survey and plat of the whole length of said road, specifying in said return the width, depth and course of all streams, the position of all swamps and marshes, and the face of the country generally, noting where timber and where prairie, and the distance said road shall have been located in each county.

Return and plat shall be signed by a majority.

Sec. 4. Said return and plat shall be signed by a majority of the commissioners and the surveyor of the said road, and forwarded to the secretary of the territory within sixty days after the review and survey of the same, to be by him recorded and preserved; they shall also, within sixty days, as aforesaid, deposit in the office of the clerk of the board of commissioners of each county through which said road shall be laid, a return and plat, as aforesaid, of so much of said road as shall be laid out and established in said county, to be there recorded as aforesaid.

Shall make out account of expense.

Sec. 5. The said commissioners shall, after the completion of the survey of any road as aforesaid, make out a certified account of all services rendered as well by the surveyor and other hands as by themselves, charging to each county through which said road may have been laid a proportion of the expenses, agreeably to the number of days employed thereon, and the board of commissioners of said county shall audit and settle the same.

Roads not commenced, shall be laid out according to this act.

Sec. 6. All territorial roads authorized to be laid out by any law of this territory, and not yet commenced, shall be laid out in the manner prescribed by this act, and the commissioners shall comply with all the regulations herein contained; and further, the established width of all territorial roads shall be seventy feet, unless otherwise provided in the acts establishing such roads.

SEC. 7. When any road shall have been located and established according to the provisions of this act, the same shall be and forever remain a public highway, and shall be opened and worked by the counties through which it shall be laid as county roads are, and no part of the expense of laying out and establishing any territorial road, or of the damages sustained by any person or persons in consequence of laying out any territorial road, shall be paid out of the territorial treasury.

Road to be a public highway.

SEC. 8. The officers and persons engaged in laying out any territorial road authorized by law, shall be entitled to the following fees, to wit: The surveyor shall be entitled to the sum of four dollars per day for the time he shall be engaged in surveying, platting and reporting upon said territorial road; each commissioner shall be entitled to the sum of two dollars per day; and each chain carrier and other assistant shall be allowed the sum of one dollar and fifty cents per day for the time occupied in making said survey.

Compensation of officers and other persons.

SEC. 9. The said commissioners shall have the power, and it shall be their duty, to employ such other means as may be necessary to the performance of their duties, and upon presentation of the proper vouchers to the county commissioners or court, it shall be the duty of said county commissioners or court to audit and pay the same as other fees.

Power and duty of commissioners.

SEC. 10. If any person obstruct any territorial road by fencing in or across such road, or by any other means whatsoever, such person so offending shall be fined for every such obstruction in the sum of, at the discretion of the court, not exceeding one hundred dollars, to be recovered by any person suing for the same before any court having cognizance thereof, to the use of such person; and the sheriff of the county in which such obstruction may occur, shall cause the same to be removed at the cost of the person so offending.

No obstructions allowed.

SEC. 11. This act shall not apply to roads beginning, running through and terminating in the same county.

Not to apply to lands, when.

SEC. 12. All acts or parts of acts inconsistent with the provisions of this act shall be and they are hereby declared to be inoperative.

Acts inconsistent with this, declared inoperative.

This act to take effect and be in force from and after its passage.

CHAPTER 141.

ROADS.

An act prescribing certain regulations touching territorial roads.

§ 1. Duty to notify commissioners.

§ 2. In what cases compensation shall not be granted.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Duty of secretary to notify commissioners.

SECTION 1. That it shall be the duty of the secretary of the territory to notify all commissioners, or at least one of them, who may be appointed to locate and establish the territorial roads provided for by this session of the legislative assembly, of their or his appointment for the respective roads to which their or his appointment refers, and of the time when and place where they or he must commence their or his action, and of the points made in said road or roads.

In what cases compensation not to be granted.

SEC. 2. Where one territorial road has already been surveyed and established, and another shall be located which will be coincident with it for any distance exceeding half a mile, there shall be no charge made or compensation granted for the entire distance to which such coincidence extends.

This act to take effect and be in force from and after its passage.

CHAPTER 142.

SALVAGE.

An act respecting salvage.

§ 1. Boats, rafts, &c., in a perishable condition, may be saved.
2. Property to be restored on proof of ownership and paying salvage.
3. Salvage, how obtained from the owner; property may be detained.
4. Taker up to make oath before a justice of the peace, and how.
5. Notice to be given; how.
6. Failure to give notice, a forfeiture of salvage, and damages to owner, &c.
7. Not necessary to cause notice to be given in newspaper, when.
8. Salvage of lumber, staves, or shingles.

§ 9. Salvage of logs, rails, fire-wood or timber.
10. Property less than ten dollars, how disposed of, &c.
11. Proceeds, how disposed of, and salvage paid.
12. Before sale, how owner may have restitution.
13. After sale, return of proceeds of sale.
14. The taker up allowed his share, remainder retained by justice for six months after return of warrant.
15. If no owner in six months, to be paid into county treasury.

§ 16. If property above the value of $100, proceedings.
17. Notice of such sale to be given.
18. Sheriff to keep the nett proceeds of such sale subject to order of court.
19. Compensation to sheriff.
20. Penalty for detaining, embezzling or injuring such property by third persons.
21. Penalty on justice of the peace for embezzling such property.
22. Value of such property to be ascertained by three householders of the neighborhood.
§ 23. Valuation to be returned into the district court.
24. When property is secreted by other persons, justice may issue search warrant.
25. When claimant shall prove title, property to be delivered to him.
26. When wrecked property found adrift, taker up allowed certain price therefor.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boats, rafts, &c., wrecked and in perishable condition, may be taken up and secured.

SECTION 1. When any boat, vessel, raft, or other property shall be lost or wrecked, and in a perishable condition, upon any river, any person may take up and secure the same at or near the place where found.

Property to be restored on proof of ownership and paying salvage.

SEC. 2. When any person shall set up a claim to such property, and shall prove his title to the same, by competent testimony, before any justice of the peace of the proper county, such taker up shall restore the same to such owner, if he pays to such taker up a premium for salvage, at the rate of *twenty per centum* upon the value of all such property.

Salvage, how obtained from the owner; property may be detained.

SEC. 3. The taker up of such boat, vessel, raft, or other property, shall be entitled to retain the same against the rightful owner, until salvage be paid, or may have and maintain an action of debt, or on the case, against such owner, for the amount of salvage due according to this act.

Taker up to make oath before a justice of the peace, when and how.

SEC. 4. Whenever any of such property shall be taken up and secured, if the same exceeds the value of ten dollars, the taker up shall forthwith go before some justice of the peace of the county and make oath that the property was wrecked, or lost, without the consent of the owner, as he believed, and was in a perishable condition, and that he was not directly or indirectly instrumental in causing the property to be wrecked, lost, set adrift, or placed in a perishable condition; and shall also state, under oath, an exact account of the quality and quantity of such property, and the time that such property was taken up; and that he has not secreted or disposed of, directly or indirectly, any part thereof.

Notice to be given, how.

SEC. 5. Within thirty days thereafter, the taker up shall insert in some newspaper in this territory nearest the place of taking up such property, for four weeks, a correct and exact account of the time and place, when and where, the said property was taken up, and the description and value thereof; and shall also put up three advertisements to the same effect, at public places in the township where such property may have been taken up, within ten days thereafter.

Failure to give notice, a forfeiture of salvage and damages to owner, &c.

SEC. 6. If the taker up shall fail to give public notice, as required, he shall forfeit all his right to salvage, and shall forfeit to the owner of such property all such damages as the owner may sustain in consequence thereof, to be recovered, with costs, before any court having competent jurisdiction.

Not necessary to cause notice to be given in a newspaper, when.

SEC. 7. If the amount of property taken up shall not exceed one hundred dollars, it shall not be necessary for the taker up to cause notice to be given in any newspaper.

Salvage of lumber, staves and shingles.

SEC. 8. Any person taking up any raft, when the same shall consist of lumber, staves or shingles, the person taking up and securing the same shall be entitled to receive the same salvage as is by this act allowed to persons for taking up and securing any boats, vessels or other property.

Salvage of logs, rails, fire-wood or timber.

SEC. 9. Rafts taken up that shall consist of logs, rails, firewood or timber, the person taking up and securing the same shall be entitled to receive for his trouble the one-fourth part of the proceeds arising from the sale of such raft.

Property less than ten dollars, how disposed of.

SEC. 10. When any person shall take up and secure any such property of less value than ten dollars, he may retain and dispose of the same to his own use, if the owner shall not claim the same within one year after the taking up.

Proceeds, how disposed of, and salvage paid.

SEC. 11. When such property shall be of greater value than ten dollars, and not exceeding one hundred dollars, the justice of the peace shall, by warrant under his hand, direct the constable of his township to sell the same at public vendue, giving twenty days' notice, by three advertisements put up at public places in his township, of the time and place of sale.

Before sale, how owner may have restitution.

SEC. 12. The owner, on proof of ownership before such justice of the peace, may have restitution of his property at any time before sale is made, on payment of the salvage and costs.

After sale, return of proceeds.

SEC. 13. After sale, the constable shall return the warrant to said justice, with the proceeds of such sale.

Taker up allowed his share, remainder how disposed of.

SEC. 14. The justice shall allow to the taker up his salvage, according to this act, and, after paying the costs, shall retain the balance in his hands, to be paid to the owner of the property, if he apply for the same, and prove his right, within six months after the return of the warrant.

If no owner in six months, to be paid into county treasury.

SEC. 15. If no claimant appear within six months, the justice shall pay the said money into the county treasury, taking the treasurer's receipt therefor, which receipt shall be filed in the office of the probate court of the proper county, and the owner may, on bringing satisfactory proof of ownership, obtain an order from the probate court of the county for the payment thereof out of the county treasury.

If property above the value of $100, judge of supreme or district court may order sale.

SEC. 16. If the property taken up and secured shall be above the value of one hundred dollars, the supreme and district courts of the territory, and any judge thereof, in vacation, shall have the power of ordering the sale thereof, by an order directed to the sheriff of the proper county for that purpose.

Notice of sale.

How sale conducted.

SEC. 17. Notice of such sale shall be given, and the sale, in every respect, conducted in the same manner as when property is seized on execution.

Sheriff to retain nett proceeds of sale, subject to order of court.

SEC. 18. The sheriff, after paying the taker up his salvage, according to this act, and the costs, shall retain the money arising therefrom, in his hands, until either of the said courts, or some judge thereof, shall authorize him to pay the same over to the owners.

Compensation to sheriff.

SEC. 19. The sheriff, for his services, shall be entitled to the same fees as he is entitled to in other cases.

Penalty for detaining, embezzling or injuring such property by third persons.

SEC. 20. If any person unlawfully detain or embezzle property wrecked, lost or adrift, contrary to this act, he shall be liable to pay double the value thereof to the party injured, to be recovered by action of debt, or on the case, in any court having jurisdiction thereof.

Penalty on justice of the peace for embezzling, &c., such property.

SEC. 21. If any justice of the peace shall fraudulently secrete, embezzle or dispose of any money or property which may come to his hands under this act, such justice shall forfeit fourfold the value thereof, to be recovered by action of debt, or on the case, one-half to the use of the party injured, and the other to the use of the territory, in any court having jurisdiction thereof.

How value of such property to be ascertained.

SEC. 22. When it may be necessary to ascertain the value of any boat, vessel, raft, or other property, any justice of the peace of the proper county, on the application of any party concerned, by warrant under his hand, may depute three substantial householders of the neighborhood, who, being sworn, shall assess and ascertain the value of such boat, vessel, raft or other property, and return their valuation to such justice.

Valuation to be returned into district court.

SEC. 23. The justice shall return such valuation, and the warrant, to the clerk of the district court of the proper county, to remain in his office as a matter of record, which valuation, as between the parties litigant, shall be final and conclusive.

When property is secreted by other persons, justice may issue search warrant.

SEC. 24. When any person shall make oath before any justice of the peace, that he has lost any property by wreck, the rising of water, tempest, or other accident, and that he has good cause to believe that such property, so lost, is secreted in possession or custody of any other person, it shall be lawful for such justice of the peace, by warrant under his hand, to direct the constable of his township to search for, and take into his possession and charge, the property so secreted.

When claimant shall prove title, property to be delivered to him.

SEC. 25. If the claimant shall prove his title to the same in the manner hereinbefore mentioned, then it shall be the duty of such constable to deliver the said property to the claimant so proving his right, he paying the fees allowed by law for similar services.

When wrecked property found adrift, taker up allowed certain price therefor.

SEC. 26. When boats are wrecked, and the cargoes found floating in barrels, hogsheads, bales or otherwise, the party taking up and securing such cargoes, or any part thereof, shall be entitled to twenty-five per centum, to be paid out of the goods so secured, or out of the proceeds of the sale thereof, which shall be full compensation to the party who may take up the same.

This act to take effect and be in force from and after its passage.

CHAPTER 143.

SCHOOLS.

An act appropriating certain funds for the support of common schools.

§ 1. Half of fines applied to common schools.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Half of fines applied to common schools.

SECTION 1. That hereafter the one-half of all fines and penalties that accrue to and are payable into the respective county treasuries, shall be applied to the support of common schools in said county.

This act to take effect and be in force from and after its passage.

CHAPTER 144.

SCHOOLS.

An act providing for the establishment of common schools.

ARTICLE I.

§ 1. Common schools to be established in each county.
2. Tribunal may form districts, &c.
3. Officers to be elected.
4. Duty of trustees.
§ 5. Duty of inspectors.
6. Trustees to be a body corporate; duties of board of trustees.
7. Trustees to execute a bond, when.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That there shall be established a common school, or schools, in each of the counties of this territory, which shall be open and free for every class of white citizens between the ages of five and twenty-one years, provided that persons over the age of twenty-one years may be admitted into such schools on such terms as the trustees of such district may direct.

Schools to be established in each county.

SEC. 2. The county board, or county tribunal, until otherwise ordered, shall from time to time form such districts in their respective counties whenever a petition may be presented for that purpose by a majority of the voters resident within such contemplated district.

Tribunal may form districts, &c.

SEC. 3. The legal voters in each district, to be established as aforesaid, may have a meeting at any time thereafter by giving ten days' previous notice at five of the most public places within the township or district of the time and place of the same; at which meeting they may proceed to elect three trustees and one inspector, to serve one year from their election, and until others are elected, who shall severally take an oath of office faithfully to discharge their respective duties.

Officers to be elected.

SEC. 4. The said trustees, after their qualification as such, shall appoint one of their number as treasurer and clerk, and one as president; they shall also have the power to elect a collector, whose duty it shall be to collect all warrants for assessments made by the trustees for school purposes.

Duty of trustees.

SEC. 5. It shall be the duty of the inspector to examine all applicants proposing to teach a common school in the county, who shall produce satisfactory evidence that they sustain a good moral character; he shall examine such candidates in spelling, reading, writing, English grammar, geography, history, arithme-

Duty of inspector.

tic, and all branches usually taught in public schools, and particularly in such school for which such persons are examined, and also as to his or her capacity for government and discipline of such school; and if, on examination, such persons are found competent, he shall grant a certificate of the branches he or she is qualified to teach, which certificate, for good cause, he shall have power to revoke.

Trustees to be a body corporate

SEC. 6. Each board of trustees shall be a body corporate, with powers to sue and be sued; to hold in their corporate capacity any estate, real or personal, for the purposes of supporting a school or schools in their district, and to apply the same agreeably to the provisions of this act. Their powers and duties shall be as follows: *First*, to select, within thirty days after their election, one of their number as president, who shall preside at all meetings of the board, and whose signature shall be attached to all assessments, receipts and warrants for money paid out for school purposes on account of the district for which he is elected; *second*, to select one of their number as clerk and treasurer, whose duty it shall be to keep a record of all their proceedings in a book provided for that purpose, and paid for out of the district school funds, which, together with the papers and moneys in his hands, he shall deliver to his successor in office within ten days after his election; *third*, to contract with and employ teachers whenever a certificate, as before provided for, is produced by them; *fourth*, to expel any pupil for improper conduct, when satisfied the best interest of the school requires it; *fifth*, to call special meetings of the inhabitants of the district, whenever a majority of the board deem it necessary, in the manner prescribed in a preceding section; *sixth*, to have the care of the school houses and other property belonging to the district; *seventh*, to assess the taxes on all taxable property, real and personal, in their district, rateably, so as to raise the amount which may be ordered by the inhabitants of the district; *eighth*, to make their warrant in due form of law, directed to the collector of their township, requiring said collector to collect and pay the same over to the treasurer within thirty days from the date of said warrant; *ninth*, to renew said warrant, in respect to any delinquent, by endorsement and date thereon; *tenth*, to make out and deliver to the secretary of the territory, on or before the first day of ———, in each year, a report in writing, dated said day, showing the whole number of white children in their district over the age of five and under the age of twenty-one years, the number taught during the last year, the length of time a school has been taught, and whether by male or female teachers, the amount of money paid for teachers' wages, and what portion thereof from public

Duties of board of trustees.

moneys, and such information as may be necessary for the secretary of the territory to enable him to make a satisfactory report to the legislature of the territory.

Trustee to execute a bond, when.

Sec. 7. Each trustee, before he receives any money from his predecessor or the treasurer, shall execute his bond, with security to be approved by the board, to the use of the inhabitants of his school district, conditioned that he will pay over, according to law, all school moneys that may come into his hands, and that he will faithfully discharge the duties of his office, and deliver to his successor all moneys, books and papers, in his hands, appertaining to his office, which bond shall be filed in the office of the county clerk.

ARTICLE II.

Duties of teachers.

§ 1. Teacher to obtain a certificate from inspector; duties.	§ 2. Duties of teacher.

Teacher to obtain a certificate, &c.

Section 1. Every teacher, before being employed, shall obtain and produce a certificate of his qualifications and morality from the inspector; it shall be his duty to keep a school register containing the names of all the scholars, their ages, the date of their entrance and the time they leave the school, the number of days of each scholar's attendance, and every thing necessary for the understanding of the trustees of the district in which he teaches.

Duties.

Duty of teachers.

Sec. 2. All teachers employed under this act shall use their best endeavors to impress on the minds of the scholars the principles of morality, justice, and sacred regard for truth.

ARTICLE III.

Of school fund.

§ 1. Lands to remain a continual fund. 2. Of fines and penalties for use of common schools.	§ 3. All moneys, as fines, &c., to be held as school moneys. 4. Of the proceeds of the sixteenth and other sections of land, &c.

Lands to remain a continual fund.

Section 1. The lands and lots which may be granted by the United States to this territory for the use of schools, shall remain a continual fund, the interest and income of which shall be inviolably appropriated to the support of common schools in the said territory.

Fines and penalties for common schools.

Sec. 2. Half of all fines or penalties incurred by breaches of the peace shall be paid into the county treasury of the county in which the offence is committed, to form a portion of the school fund of said county.

To be held as school moneys.

Sec. 3. All moneys which shall be paid into any county treasury on account of fines, penalties or forfeitures, shall be held and accounted for as county school moneys.

Of the proceeds of the sixteenth and other sections of land, &c.

Sec. 4. The proceeds of the sixteenth and other sections, or other land which may be donated or selected, the interest of such proceeds, the rent and profit of such lands, and all fines, penalties and forfeitures, and damages for waste, trespass or injury thereto, constitute a township school fund for the township to which it belongs; and any territorial school moneys which may be apportioned to any township which shall not be organized, are to be added to and become part of the township school fund for such township.

ARTICLE IV.

Organizing school townships.

§ 1. Elections to be held, &c.
2. Powers of county commissioners.
§ 3. May adjourn from time to time.

Election to be held.

Section 1. For the purpose of organizing school townships in the counties in this territory, it shall be necessary for the people of said township to hold an election on some day designated, notices of which shall be posted up in five of the most public places in said township, at least ten days previous to the time of meeting, by the county commissioners of the county.

Powers of county commissioners.

Sec. 2. The county commissioners of each county shall have the power, and it shall be their duty, to call the first meeting of the qualified voters of the different townships, which meeting shall, when assembled, *first*, appoint a chairman of the meeting, and also a clerk; *secondly*, lay off the township, by a majority of the voters present, into any number of districts deemed necessary; *thirdly*, select a site for a school house, and devise means to raise money for the purposes of erecting or purchasing school houses, and every thing else necessary to be done in the premises.

May adjourn from time to time.

Sec. 3. The said meeting shall also have power to adjourn from time to time, as they may deem proper.

This act to take effect and be in force from and after its passage.

CHAPTER 145.

SEAT OF GOVERNMENT.

An act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the territory of Kansas.

§ 1. Sessions to be held at Manual Labor School.
2. Governor and secretary to keep their offices at Manual Labor School.
3. Concurrent resolution to adjourn the present session.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Until the seat of government is located by law, the sessions of the legislative assembly shall be held at the Shawnee Manual Labor School, in the territory of Kansas.

Session to be held at Shawnee Manual Labor School.

SEC. 2. Until the seat of government is located as above specified, the governor and secretary of the territory shall respectively keep their offices at the Shawnee Manual Labor School, in said territory.

Governor and secretary of territory to keep their offices at Shawnee Manual Labor School.

SEC. 3. So soon as this act shall take effect, the council and house of representatives shall have power, by a concurrent resolution, to adjourn the present session to some day to be agreed on, and to hold the remainder of such session at said Shawnee Manual Labor School; and upon such adjournment it shall be the duty of the governor and secretary of state, respectively, immediately to remove and keep their offices at said Shawnee Manual Labor School, in the territory aforesaid.

Power of council and house of representatives to adjourn by concurrent resolution.

This act to take effect and be in force from and after its passage.

CHAPTER 146.

SEAT OF GOVERNMENT—PERMANENT.

An act to locate the seat of government.

§ 1. Seat of government located at Lecompton.
2. Officers required to keep their offices at seat of government.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. The permanent seat of government of the territory of Kansas is hereby located at the town of Lecompton, on

Seat of government located at Lecompton.

the south bank of the Kansas river, opposite the mouth of the Grasshopper creek.

Officers required to keep their offices at seat of government.

Sec. 2. All the civil officers of this territory whose residences are required by law to be at the seat of government hereby established, and all the officers of this territory who are required by law to keep their offices at the seat of government, are hereby required to remove their offices to the said seat of government at the earliest practicable time.

This act to take effect and be in force from and after the adjournment of the present legislative assembly.

CHAPTER 147.

SECURITIES.

An act concerning securities.

§ 1. Securities may require person having right of action to bring suit.
2 If suit not brought within thirty days after notice, security exonerated.
3. Manner of serving notice by security, to bring suit.
4. To what cases the first two sections shall not extend.
5. Money paid by security to be refunded by the principal debtor.
6. Remedy against principal, by suit, for money or property paid.
7. Security paying more than his due portion, may recover the excess from his co-security, how.
8. No such security compelled to pay more than his proportion of the original demand.
9. When judgment is against principal and security, and security pays same, he can have judgment against principal for the amount on motion.
10. Notice of such motion to be given, when; limitation of time to make such motion.
11. Securities of officers may be relieved by petition addressed to the district court.
12. What the petition shall state; to be verified by affidavit.
13. Notice, with copy of petition, to be served on the principal; how and when.
§ 14. If principal be absent from the territory six months, publication to be made; how.
15. Court or officer to hear application, may require new bond and security to be given; when.
16. Such new bond and security how taken and filed.
17. When such new bond is taken, &c., securities in former bond to be discharged; effect and extent of.
18. On principal failing to give new bond, his office to be vacated.
19. Remedy of securities who pay money for officers.
20. Remedies under this act may be maintained by and against executors and administrators; when.
21. Securities of county officers to be residents thereof.
22. When security becomes non-resident of the county, or insolvent, or dies, the officer ordered to show cause why he should not give new bond.
23. If security found insufficient, officer may be required to give additional security.
24. When new bond is given, former securities are discharged.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Securities may require person having right of action to bring suit.

Section 1. Any person bound as security for another, in any bond, bill or note for the payment of money or delivery of property, may, at any time after an action has accrued thereon, require, in writing, the person having such right of action forthwith to commence suit against the principal debtor, and other parties liable. (*a*)

Security exonerated, if suit not brought in thirty days after notice.

Sec. 2. If such suit is not commenced within thirty days after the service of such notice, and proceeded in with due diligence, in the ordinary course of law, to judgment and execution, such security shall be exonerated from liability to the person so notified.

Notice, how served.

Sec. 3. The notice required above shall be served by delivering a copy thereof to the person having the right of action on the instrument, or leaving a copy at his usual place of abode, with some white person of the family over the age of fifteen years.

To what cases the two first sections shall not extend.

Sec. 4. The first two sections shall not extend to the bond of any administrator, executor, guardian, curator, officer or other person, given to secure the performance of the duty of his office, trust, place, or business; nor to any bond with a collateral condition, except bonds with conditions exclusively for the payment of money or delivery of property, or for the performance of covenant, or agreement, for the payment of money or delivery of property.

Money paid by security, to be refunded by principal debtor.

Sec. 5. When any bond, bill, or note for the payment of money or delivery of property, shall not be paid by the principal debtor, according to the tenor thereof, and such bond, bill, or note, or any part thereof, shall be paid by any security thereto, the principal debtor shall refund to such security the amount or value so

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(*a*) Parol evidence is admissible to show that a party to a bond executed it merely as surety; Foster vs. Wallace, 2 Missouri Rep., 231; see Davidson vs. Peck, 4 Missouri Rep., 438. A security cannot maintain an action against a constable, on his official bond, for neglect in serving process against his principal, in consequence of which the principal becomes insolvent and the surety compelled to pay the money; State vs. Reynolds, 3 Missouri Rep., 95. If a security notifies a creditor to sue, any indulgence thereafter to the principal, to the injury of the security, will discharge the surety, *ibid.* Neglect on the part of the state to bring suit on an official bond, will not discharge sureties; Parks vs. State, 7 Missouri Rep., 194. In a suit against securities on a bond, the principal debtor is not a competent witness for the sureties; although indemnified against the costs of suit, he is interested under the act concerning sureties; Shelton vs. Ford, 7 Missouri Rep., 209. The payee of a note and the surety thereto reside in the same county, the note is within the jurisdiction of a justice's court; on notice to sue by the surety, the payee is bound to follow the principal in a distant county, but may sue the surety alone; Hughes vs. Gordon, 7 Missouri Rep., 297. Mere neglect to sue will not discharge the surety; but if a debt is secured by a lien, and the lien is abandoned, this will release the security; Ferguson vs. Turner, 7 Missouri Rep., 497.

paid, with interest thereon at ten per centum per annum from the time of such payment.

Remedy against principal, by suit for money, or property paid.

SEC. 6. When such payment by a security shall be made in money, such security may recover the same, with the interest, in an action for so much money paid to the use of the defendant; and when such payment is made in property, he may recover the value, with the interest, in an action, as for such property sold to the defendant.

Security paying more than his due portion, may recover the excess, how.

SEC. 7. When there are two or more securities in any such bond, bill, or note, and any of them shall pay, in money or property, more than his due portion of the original demand, such security may recover such excess in the same form of action as herein provided for a security against the principal debtor.

No such security compelled to pay more than his proportion of the original demand

SEC. 8. No such security shall be compelled in any such action, as specified in the last section, to pay more than his due proportion of the original demand; and when such security shall have previously paid any portion thereof, he shall be liable in such action to pay only so much as the amount already paid by him falls short of his due proportion of the original demand.

Security can have judgment against principal, on motion, when.

SEC. 9. In all cases where judgment is given in any court, whether of record or not, upon any bond, bill, or note, for the payment of money or delivery of property, against the principal debtor and any security therein, and such security shall pay the judgment, or any part thereof, he shall be entitled, upon motion, to a judgment in the same court against the principal debtor, for the amount he has paid, with ten per cent. interest thereon from the time of payment, together with costs.

Notice of such motion to be given, when; limitation of time to make such motion.

SEC. 10. No judgment shall be rendered, as is provided in the last preceding section, unless the party applying therefor shall have given the adverse party at least ten days' notice, in writing, of such motion, nor unless such motion shall be made within one year after the rendering of the original judgment.

Securities of officers may be relieved by petition.

SEC. 11. Any person bound as security in any bond given by any officer, to secure the faithful performance of the duties of such officer, may, on his petition in writing, addressed to the court authorized by law for the time being to take and approve such official bonds, be discharged from all future liability on such official bond.

What petition shall set forth, &c.

SEC. 12. The petition shall set forth the facts upon which the application for a discharge is founded, and shall be verified by the affidavit of the petitioner thereto annexed.

Notice and copy of petition to be served on principal, how and when.

SEC. 13. A notice, in writing, of such intended application, together with a copy of the petition, shall be personally served on the principal in the bond, at least fifteen days before the making of the application.

SEC. 14. If the principal in the bond shall be absent from the territory for the period of six months, the publication of the notice and petition, in some newspaper printed in this territory, for four weeks successively, shall be sufficient service of the notice.

Publication to be made, when.

SEC. 15. The court to whom the petition is addressed shall hear the application, and may, on examination thereof, in their discretion, make an order requiring the principal in such bond to give new bond and security for the performance of his official duties.

New bond and security may be ordered to be given.

SEC. 16. If such bond and security is given, it shall be taken, approved and filed in the same manner that the official bond of such officer is required by law, for the time being, to be taken, approved and filed.

Such new bond and security, how taken and filed.

SEC. 17. When such new bond is taken, approved and filed, it shall immediately operate as a discharge of all the securities in the former bond from all liability arising from any subsequent misconduct or default of the principal therein, and such securities shall thenceforth be liable on such bond only for such breaches thereof as shall have happened prior to the taking, approving and filing of the next bond.

When such new bond is taken, securities in former bond to be discharged, &c.

Effect and extent of.

SEC. 18. If such principal shall neglect or refuse to give such new bond and security within sixty days after making such order, his office, trust, power and authority shall thenceforth be vacated, cease and determine, and the court making such order, or having the power to take such new bond, shall forthwith certify such vacancy to the court or officer having power to appoint a successor, and such vacancy shall be immediately supplied according to law.

On principal failing to give new bond, his office to be vacated.

SEC. 19. Any person bound as security in any bond given by any officer to secure the faithful performance of his duties, who shall pay any money which he shall have been liable to pay by reason of such bond, shall have the same right and remedy against his principal and co-securities that are provided in this act against principals and co-securities in bonds, bills and notes for the payment of money or delivery of property.

Remedy of securities who pay money for officers.

SEC. 20. The remedies given by this act may be maintained by and against executors and administrators, in all cases where they could be maintained by or against their testators or intestates if they were living.

Remedies by and against executors and administrators.

SEC. 21. The securities of all clerks, sheriffs, constables, collectors, and other county officers, shall be residents of the county in which the bonds, to which they become parties by reason of being securities for any of the said officers, shall be executed.

Securities of county officers to be residents thereof.

If security becomes non-resident or insolvent, or dies, officer to show cause why he should not give a new bond.

Sec. 22. When it shall come to the knowledge of any court, whose duty it is to approve the official bonds of any of the officers named in the preceding section, that a surety of any of the said officers has become non-resident of the county in which his official bond was executed and required to be filed, or has died, become insolvent, or otherwise insufficient, the said court shall make an order requiring the officer for whom any such security executed the bond, on a day therein named, to appear and show cause why he should not give additional security.

Officer may be required to give additional security, when

Sec. 23. If, upon an investigation of the matter, it shall appear that any surety has become non-resident of the county in which the bond is filed, has died, become insolvent, or in any otherwise insufficient, the court shall require the officer for whom such surety executed the bond, to give additional security by a day named, and, in default thereof, the said office shall be forfeited and the same shall become vacant, and the facts shall be certified to the court or officer whose duty it is to fill such vacancy.

When new bond is given, former securities discharged

Sec. 24. When the additional bond is given and approved, the former sureties shall thereby be discharged from any misconduct of the principal, after the approval of said bond.

This act to take effect and be in force from and after its passage.

CHAPTER 148.

SET-OFF.

An act concerning set-off.

§ 1. Mutual debts may be set off.
2. When debts may be set off in suits brought by executors, &c.
3. When allowed in suits against joint obligators.
4. May be pleaded or given in evidence; notice required.
5. If equal, or less than plaintiff's demand, judgment, how rendered.
§ 6. If balance due defendant, judgment may be rendered for him.
7. Executions may be set off.
8. Officer how to proceed upon delivery of execution to him.
9. Instances enumerated when set-offs shall not be allowed.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Mutual debts may be set-off

Section 1. If any two or more persons are mutually indebted, in any manner whatsoever, and one of them commences an action against the other, one debt may be set off against the other, although such debts are of a different nature. (*a*)

When debts may be set off in suits brought by executors and administrators.

Sec. 2. In suits brought by administrators and executors, debts existing against their intestates or testators, and belonging to the defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased; (*b*) but no demand against an executor or administrator, in his own individual capacity, shall be allowed as a set-off against any debt or damages sued for by such executor or administrator, upon a contract made by him in his representative capacity, whether the contract shows the representative capacity in which he contracted or not.

When allowed in suits against joint obligors.

Sec. 3. In all actions brought against one or more joint obligors or promissors, any debt or demand due from the plaintiff to the defendant in the action, or to all the obligors or promissors in the contract sued upon, may be set off against the demand of the plaintiff.

May be pleaded or given in evidence; notice required.

Sec. 4. A set-off may be given in evidence upon the general issue, or pleaded in bar; but when it is intended to be insisted upon in evidence, notice (*c*) shall be given, at the time of pleading the general issue, of the demand so intended to be insisted upon, and upon what account it became due. (*d*)

(*a*) *Vide* Cowden vs. Elliot, 2 Missouri Rep., 60; Johnson vs. Strader and Thompson, 3 Missouri Rep., 359; Whaley & Blackwell vs. Cape, 4 Missouri Rep, 233. The provisions of the statute concerning set-off do not apply to a note which expresses to be payable "without defalcation;" Collins vs. Waddle, 4 Missouri Rep., 452. The statute is not restricted to mutual persons, but extends to corporations; City of St. Louis vs. Rogers, 7 Missouri Rep., 19. A note transferred by delivery, for a valuable consideration, may be the subject of set-off; the assignment need not be in writing; Frazier et al. vs. Gibson, 7 Missouri Rep., 271. A note given for a certain sum, payable in work, cannot be set off in an action founded on a debt due in money, although the debt accrued for the same kind of work stipulated for in the note; Prather vs. McEvoy, 7 Missouri Rep., 598; *vide* Chase vs. Chase, 8 Missouri Rep., 103. Petition in debt against A, B, and C, on a note assigned to plaintiff by one W, the defendants pleaded jointly *nil debit;* A and B pleaded also, by way of set-off, that W, the assignee of the plaintiff, was, before and at the commencement of the suit, indebted to said A by note in a certain sum, and that said W was also indebted to said B in a certain sum, to be paid in notes and accounts; held, that the plea was good for reasons assigned in the opinion; Austin vs. Feland et al., 8 Missouri Rep., 309.

(*b*) In a suit brought by administrators or executors, on a cause of action accruing to them as such, since the death of their intestate or testator, the defendant cannot set off a debt due him from such intestate or testator; Woodward & Thornton vs. McGaugh & Brown, 8 Missouri Rep., 161.

(*c*) A notice of set-off should contain the substance of a declaration; Brady vs. Hill and Keese, 1 Missouri Rep., 315.

(*d*) *Vide* Barton vs. Wilkins, 1 Missouri Rep., 74; Scogin vs. Hudspeth, 3 Missouri Rep., 123; Burton vs. Martin, 4 Missouri Rep., 200; Oldham vs. Henderson, ibid, 295. In a suit by the assignee of a note payable "without defalcation," but not negotiable like an inland bill of exchange, for want of the words "negotiable and payable," the payor cannot plead a set-off, though he may plead a total failure of consideration; Maupin & Jamison vs. Smith, 7 Missouri Rep., 402.

If amount of set-off be equal or less than plaintiff's demand, judgment how rendered.

SEC. 5. If the amount of set-off be equal to the plaintiff's demand, the plaintiff shall recover nothing by his action; if it be less than the plaintiff's demand, he shall have judgment for the residue only. (*e*)

Judgment rendered for balance due defendant.

SEC. 6. If there be found a balance due from the plaintiff to the defendant, judgment shall be rendered for the defendant for the amount thereof, together with costs.

Executions may be set off.

SEC. 7. Executions between the same parties may be set off one against another, if required by either party, in the manner prescribed in the following sections.

Officer, how to proceed on delivery of execution to him.

SEC. 8. When any one of the executions is delivered to an officer to be served, the person who is the debtor therein may deliver his execution to the same officer, whether the second execution is directed to the same or to any other officer, and the officer shall apply it, as far as it will extend, to the satisfaction of the first execution; or, if such first execution shall be the smallest in amount, then to its entire satisfaction, and endorse on such execution the fact of such application; and the balance due on the larger execution may be collected and paid in the same manner as if there had been no set-off.

When set-offs shall not be allowed.

SEC. 9. Such set-off shall not be allowed in the following cases: *First*, when the creditor in one of the executions is not in the same capacity and trust as the debtor in the other; *second*, when the sum due on the first execution shall have been lawfully and in good faith assigned to another person, before the creditor in the second execution became entitled to the sum due thereon; *third*, when there are several creditors in one execution, and the sum due on the other is due from a part of them only; *fourth*, when there are several debtors in one execution, and the sum due on the other is due to a part of them only.

This act to take effect and be in force from and after its passage.

(*e*) In the second and third editions of the Rev. C. of 1835, the words "the plaintiff shall recover nothing by his action, if it be less than the plaintiff's demand," are entirely left out of the fourth section, rendering it nonsensical.

CHAPTER 149.

SETTLERS.

An act to prevent trespass on the possessions of settlers on the public lands.

§ 1. In certain actions, person not compelled to prove actual inclosure; proviso.

§ 2. What shall be considered an abandonment of claim; proviso.

3. Persons may mark out their claims within three months.

Whereas the acts of congress granting the right of pre-emption to one hundred and sixty acres to actual settlers on the public lands, do not limit his possessions or his purchases at the land sales; and whereas congress has frequently, before and since the passage of the present pre-emption laws, approved of laws of Wisconsin, Iowa and Minnesota, protecting settlers in the possession of three hundred and twenty acres; and whereas it would be unjust to deny to the people of Kansas the rights enjoyed by the people of the northwest; therefore,

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

In certain actions, not compelled to prove actual inclosure

SECTION 1. That hereafter in actions of trespass, *quare clausum fuegit* trespass, ejectment, forcible entry and detainer, as well as forcible detainer only, when any person may be settled upon the public lands in this territory, his or her possession shall be considered on the trial as extending to the boundaries embraced by the claim of such person, so as to enable him or her to have and maintain an action, as aforesaid, without being compelled to prove an actual inclosure or title to the soil; *provided*, that such claim shall not exceed, in number of acres, the amount limited to any one person according to the custom or mutual agreement of a majority of the settlers in the neighborhood in which such land is situated, and shall not in any case exceed three hundred and twenty acres; that such claim may be located in two different parcels, to suit the convenience of the holder; that every such claim shall be marked, so that the boundaries thereof may be readily traced; and *provided*, that no person shall, by virtue of this act, claim or hold more than one hundred and sixty acres of timber land; and *provided, further*, that no person shall be entitled to sustain an action, as aforesaid, for possession of, or injury to, any claim unless he or she occupy the same, or shall have made improvements thereon to the value of fifty dollars.

Proviso.

Proviso.

Proviso.

What shall be considered an abandonment of claim.

Sec. 2. That a neglect to occupy or improve a claim for the period of six months shall be considered such an abandonment as to preclude the owner from sustaining an action as aforesaid; *provided, however,* that occupancy by tenant shall be considered equally valid as personal residence.

Proviso.

Persons may mark out their claims within three months.

Sec. 3. All persons holding claims without definite boundaries, may mark out the same at any time within three months from the passage of this act; but no person shall, in any case, interfere with pre-existing rights.

This act to take effect and be in force from and after its passage.

CHAPTER 150.

SHERIFF.

An act providing for the office of sheriff, and prescribing his duties.

§ 1. Sheriffs to be elected by legislative assembly, when; term of office; to give bond, conditions.
2. To be elected every four years.
3. Powers and duties of sheriff.
4. Shall execute writs, process, &c.
5. To be collector of taxes.
6. May appoint deputies; deputies to take oath of office.
7. Vacancy in office, how filled.

§ 8. Sheriff to settle with tribunal, how often; on failure, liable.
9. Sheriff overcharging fees, forfeiture.
10. Not to become purchaser of property, when.
11. Shall have charge of prisoners, &c.
12. Fees prescribed by law.
13. Powers of sheriff, &c.; proviso.
14. To perform duties of crier and bailiff; proviso.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Sheriff to be elected by legislature.

Term of office.

Section 1. There shall be elected, by joint vote of the legislative assembly, at the present session, for each county, a sheriff, who shall hold his office until the general election for members of the legislative assembly in the year eighteen hundred and fifty-seven; and such sheriff, when elected, shall be commissioned by the governor, and shall take the oath of office prescribed by law, which shall be endorsed on his commission, and the same, so endorsed, shall be recorded in the office of the recorder of the county; and such sheriff, before entering upon the duties of his office, shall give bond, to be approved by the probate court, in a sum not less than two thousand dollars nor more than fifty thousand dollars, as may be prescribed by the said probate court, conditioned that he will faithfully collect and pay over all moneys en-

To give bond.

Conditions.

trusted to him for collection, and account for all money coming into his hands, and faithfully and impartially demean himself in office; said bond shall be filed and recorded in the recorder's office of the proper county.

SEC. 2. At the general election for members of the legislative assembly for the year eighteen hundred and fifty-seven, and every four years thereafter, the qualified voters of each county shall elect a sheriff, who shall hold his office for the term of four years, and until his successor shall be duly elected, commissioned and qualified.

To be elected every four years.

SEC. 3. The sheriff of each county shall be a conservator of the peace throughout his county; he shall have the custody of all jails and prisoners in his county, and shall, if necessary, appoint keepers thereof, for whose conduct he shall be responsible, and he may remove them at pleasure; and such sheriff is hereby empowered to call to his aid the power of the county whenever the same may be necessary in the discharge of any lawful duty.

Powers and duties of sheriff.

SEC. 4. The sheriff shall execute all writs and process, original or mesne, which may be directed to him by any court of record, or the judge or clerk thereof, either civil or criminal, and all criminal process which may be directed to him by any justice of the peace, and all other process by any law required or authorized to be directed to him; and he shall serve all notices, citations or other matters or things which may be necessary in the transaction of any business before any tribunal or officer, and which may be placed in his hands for service.

Shall execute writs, process, &c.

SEC. 5. The sheriff of each county shall be *ex officio* collector of the taxes, both territorial and county taxes, within the county for which he is sheriff.

To be collector of taxes.

SEC. 6. The sheriff of each county shall have power and authority to appoint one or more deputies, with the approval of the probate court or the judge thereof, and to remove the same at pleasure; which deputy, when so appointed, shall take the oath office of his principal, and such sheriff shall at all times be responsible for the acts of his deputy.

May appoint deputies.

Deputies to take oath of office.

SEC. 7. If any vacancy happens in the office of sheriff, such vacancy shall be filled by appointment, by the tribunal transacting county business, for the unexpired term.

Vacancy in office; how filled.

SEC. 8. Every sheriff shall settle once every three months with the tribunal transacting county business for all moneys belonging to such county, which may be by him collected on fines, licenses or otherwise, except for taxes collected under a county levy, and pay the same over into the county treasury, taking the treasurer's receipt for the same; and such sheriff shall, once in

Sheriff to settle once in three months.

To settle with tribunal, how often.

each year, settle with such tribunal for all taxes collected under any county levy, and shall immediately pay such taxes into the county treasury, taking the treasurer's receipt for the same; and the said sheriff shall, once in each year, at such time as may be prescribed by law, settle with the auditor of public accounts for all sums collected for the use of the territory, either of fines, taxes or otherwise, and pay the same into the territorial treasury, taking the treasurer's receipt for the same; and if no time be prescribed by law, then at such time as may be prescribed by the auditor of public accounts; and every sheriff who shall fail to make settlement, as provided for in this section, shall be liable for fifteen per cent. per month for every month he shall so fail to comply, and all time less than a month shall be counted as one month, and every excess of a month shall be counted as an additional month, and he shall also be liable to be sued upon his official bond.

On failure to make settlement, liabilities.

Sheriff overcharging fees, forfeiture.

SEC. 9. Any sheriff who shall charge more or greater fees than are allowed by law, shall forfeit to the person so charged quadruple the amount of fees so illegally charged, to be recovered by action of debt before any court having jurisdiction.

Not to become purchaser of property, when.

SEC. 10. No sheriff shall directly or indirectly become the purchaser of any property, real or personal, by him exposed to sale under or by virtue of any execution or order, or any other authority by which he may sell as such sheriff, and all such purchases by such sheriff are hereby declared to be absolutely null and void.

Shall keep safely all prisoners, and perform other duties.

SEC. 11. All sheriffs shall receive and safely keep all prisoners committed to their charge by any person lawfully authorized to have charge of such prisoner, whether such person be an officer or not; and all persons lawfully in the custody of any sheriff shall be confined in the jail of the county, if there be such jail; and if not, then such officer may guard such prisoner, or may, in his discretion, or shall, under the order of any court or committing magistrate, carry such prisoner to the nearest or other safest jail in the territory, and the keeper of such jail shall receive such prisoner, and shall be responsible for his safe keeping.

Fees prescribed by law.

SEC. 12. The sheriff shall receive such fees as may be prescribed by law for his services, and such per cent. or other compensation for the collection of taxes as may be determined by law.

Powers of sheriff, &c.

Proviso.

SEC. 13. The sheriff of such county shall have and possess all the authority, power and privileges usually conferred on officers of a similar character; *provided*, that nothing in this act contained shall be so construed as to interfere in any way with the rights, privileges, duties and emoluments of right belonging to or by law given, or in any way appertaining to the marshal of the territory under any law of the United States; but the powers, rights, privileges, duties and emoluments of such sheriff shall be confined to the matters arising under the laws of the territory, or such duties as may devolve upon him in and of such marshal.

To perform duties of crier and bailiff.

SEC. 14. The sheriff, by himself or deputy, shall perform all the duties of crier and bailiff, and no such officer as crier or bailiff shall be appointed under or by authority of the laws of this territory; *provided*, that all courts may, whenever it becomes necessary for reasons of interest, prejudice or otherwise, appoint elizors for the summoning of juries or the service of writs.

Proviso.

This act to take effect and be in force from and after its passage.

CHAPTER 151.

SLAVES.

An act to punish offences against slave property.

§ 1. Person raising insurrection punishable with death.
2. Aider punishable with death.
3. What constitutes felony.
4. Punishment for decoying away slaves.
5. Punishment for assisting slaves.
6. What deemed grand larceny.
7. What deemed felony.
§ 8. Punishment for concealing slaves.
9. Punishment for rescuing slaves from officer.
10. Penalty on officer who refuses to assist in capturing slave.
11. Printing of incendiary documents.
12. What deemed a felony.
13. Who are qualified as jurors.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Persons raising insurrection, punished with death

SECTION 1. That every person, bond or free, who shall be convicted of actually raising a rebellion or insurrection of slaves, free negroes or mulattoes, in this territory, shall suffer death.

Aider, punishable by death.

SEC. 2. Every free person who shall aid or assist in any rebellion or insurrection of slaves, free negroes or mulattoes, or shall furnish arms, or do any overt act in furtherance of such rebellion or insurrection, shall suffer death.

Any person persuading slaves to rebel, &c., guilty of felony.

SEC. 3. If any free person shall, by speaking, writing, or printing, advise, persuade or induce any slaves to rebel, conspire against or murder any citizen of this territory, or shall bring into, print, write, publish or circulate, or cause to be brought into, printed, written, published or circulated, or shall knowingly aid or assist in the bringing into, printing, writing, publishing or circulating, in this territory, any book, paper, magazine, pamphlet, or circular, for the purpose of exciting insurrection, rebellion, revolt or conspiracy on the part of the slaves, free negroes or mulattoes, against the citizens of the territory or any part of them, such person shall be guilty of felony and suffer death.

Punishment for decoying away slaves.

SEC. 4. If any person shall entice, decoy, or carry away out of this territory, any slave belonging to another, with intent to deprive the owner thereof of the services of such slave, or with intent to effect or procure the freedom of such slave, he shall be adjudged guilty of grand larceny, and, on conviction thereof, shall suffer death, or be imprisoned at hard labor for not less than ten years.

Punishment for assisting slaves to run away.

SEC. 5. If any person shall aid or assist in enticing, decoying, or persuading, or carrying away or sending out of this territory, any slave belonging to another, with intent to procure or effect the freedom of such slave, or with intent to deprive the owner thereof of the services of such slave, he shall be adjudged guilty of grand larceny, and, on conviction thereof, shall suffer death, or be imprisoned at hard labor for not less than ten years.

What deemed grand larceny.

SEC. 6. If any person shall entice, decoy, or carry away out of any state or other territory of the United States, any slave belonging to another, with intent to procure or effect the freedom of such slave, or to deprive the owner thereof of the services of such slave, and shall bring such slave into this territory, he shall be adjudged guilty of grand larceny, in the same manner as if such slave had been enticed, decoyed, or carried away out of this territory, and in such case the larceny may be charged to have been committed in any county of this territory, into or through which such slave shall have been brought by such person, and on conviction thereof, the person offending shall suffer death, or be imprisoned at hard labor for not less than ten years.

What deemed felony.

SEC. 7. If any person shall entice, persuade or induce any slave to escape from the service of his master or owner, in this territory, or shall aid or assist any slave in escaping from the service of his master or owner, or shall aid, assist, harbor or conceal any slave who may have escaped from the service of his master or owner, shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term of not less than five years.

Punishment for concealing slave

SEC. 8. If any person in this territory shall aid or assist, harbor or conceal any slave, who has escaped from the service of his master or owner, in another state or territory, such person shall be punished in like manner as if such slave had escaped from the service of his master or owner in this territory.

Punishment for rescuing slave from officer.

SEC. 9. If any person shall resist any officer while attempting to arrest any slave that may have escaped from the service of his master or owner, or shall rescue such slave when in custody of any officer or other person, or shall entice, persuade, aid or assist such slave to escape from the custody of any officer or other person who may have such slave in custody, whether such slave have escaped from the service of his master or owner in this territory or in any other state or territory, the person so offending shall be guilty of felony and punished by imprisonment at hard labor for a term of not less than two years.

Penalty on officer who refuses to assist in the capture of slaves.

SEC. 10. If any marshal, sheriff or constable, or the deputy of any such officer, shall, when required by any person, refuse to aid or assist in the arrest and capture of any slave that may have escaped from the service of his master or owner, whether such slave shall have escaped from his master or owner in this territory, or any state or other territory, such officer shall be fined in a sum of not less than one hundred nor more than five hundred dollars.

Printing of incendiary documents.

SEC. 11. If any person print, write, introduce into, publish or circulate, or cause to be brought into, printed, written, published or circulated, or shall knowingly aid or assist in bringing into, printing, publishing or circulating within this territory, any book, paper, pamphlet, magazine, handbill or circular, containing any statements, arguments, opinions, sentiment, doctrine, advice or innuendo, calculated to produce a disorderly, dangerous or rebellious disaffection among the slaves in this territory, or to induce such slaves to escape from the service of their masters, or to resist their authority, he shall be guilty of felony, and be punished by imprisonment and hard labor for a term not less than five years.

What deemed a felony.

SEC. 12. If any free person, by speaking or by writing, assert or maintain that persons have not the right to hold slaves in this territory, or shall introduce into this territory, print, publish, write, circulate or cause to be introduced into this territory, written, printed, published or circulated in this territory, any book, paper, magazine, pamphlet or circular, containing any denial of the right of persons to hold slaves in this territory, such person shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term of not less than two years.

Who are qualified as jurors.

SEC. 13. No person who is conscientiously opposed to holding slaves, or who does not admit the right to hold slaves in this territory, shall sit as a juror on the trial of any prosecution for any violation of any of the sections of this act.

This act to take effect and be in force from and after the fifteenth day of September, A. D. 1855.

CHAPTER 152.

STATE.

An act giving meaning to the word "state."

§ 1. The word "state" to mean "territory."

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

The word "state" to mean "territory."

Section 1. Wherever the word "state" occurs in any act of the present legislative assembly, or any law of this territory, in such construction as to indicate the locality of the operation of such act or laws, the same shall in every instance be taken and understood to mean "territory," and shall apply to the territory of Kansas.

This act to take effect and be in force from and after its passage.

CHAPTER 153.

STRAYS.

An act concerning strays.

§. 1. When and where strays may be taken up.
2. Who authorized to take up strays; who required to give security.
3. When and how a stray may be taken up, though not on the plantation of the taker up.
4. Taker up to give notice to justice of the peace; oath to be taken.
5. Justice may summon appraisers.
6. Oath of appraisers; what appraisement to embrace; how entered by justice.
7. Justice to deliver duplicate copies of entries; one copy to be delivered to clerk of county tribunal.
8. Justice to give taker up a statement of his duties.
9. Taker up to set up notices in the township; what to contain.
10. Clerk of county tribunal to record justice's certificate.
11. Secretary of territory to contract with two printers to publish advertisements of strays.
§ 12. Secretary to notify clerks of the printer contracted with.
13. Duty of printer of advertisements of strays.
14. Clerk shall file and preserve the advertisements.
15. Compensation of printer.
16. Contracts with printers to commence and end on 1st October.
17. Vacancy in office of printer, how filled.
18. Copies of appraisement to be transmitted to printer, when; fees, &c., by whom paid.
19. Appraisement of neat cattle, sheep, hogs and goats, not to be transmitted to printer.
20. Taker up may use stray, how.
21. How owner may prove his property; when entitled to receive it.
22. Allowance to taker up, how settled.

§ 23. Title of taker up to stray, complete; when.
24. Taker up to pay into treasury, when.
25. In default of payment, county to hold a lien.
26. When taker up not liable for escape or death.
27. Reward for taking up a stray.
28. Fees of clerks.
29. Fees of justice; all animals to be included in one certificate.
§ 30. Penalty for selling, swapping or taking a stray out of the territory, before title is vested in taker up.
31. Penalty on taking up, using or working strays contrary to this act.
32. Penalty for failing to comply with this act, or for abusing a stray.
33. Penalty for printer, clerk, or justice, neglecting or refusing to perform his duties.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

When and where strays may be taken up.

SECTION 1. No person shall take up any unbroke animal, as a stray, between the first day of April and the first day of November, unless the same be found within his lawful inclosure; (*a*) nor shall any person, at any time, take up any stray, unless it be found on his plantation.

Who authorized to take up strays; who required to give security.

SEC. 2. No person shall be authorized to take up any stray beast, unless he be a citizen and a householder, unless he first enter into bond, with sufficient sureties, to the territory of Kansas, for the use of the owner, in double the amount of the property proposed to be taken up, to be ascertained by the justice before whom the person wishes to post such stray beast.

When and how a stray may be taken up, though not on the plantation of the taker up.

SEC. 3. If any horse, mule, or ass, liable to be taken up, come to any person's plantation, any other person may notify him of the fact; and if he fail to take up such stray for more than ten days after such notice, any other person of the same county may take up such stray, and proceed with it as if taken up on his own plantation, except that he shall produce to the justice of the peace proof of the service of the notice, and shall not swear that the stray was taken up on his own plantation.

Taker up to give notice to justice of the peace; oath to be taken.

SEC. 4. If any person take up any stray of any kind, and it be not claimed and proved, he shall, within five days, go before a justice of the peace of the county, and make oath that it was taken up on his own plantation, and that the marks and brands have not been since altered to his knowledge.

Justice may summon appraisers.

SEC. 5. If necessary, the justice shall issue a summons to three disinterested householders, to appear and appraise the stray.

Oath of appraisers; what appraisement shall embrace; how entered by justice.

SEC. 6. The householders, or two of them, shall take an oath that they will fully, fairly, and impartially appraise the same; and their appraisement, embracing a description of the size, color, sex, age, marks, and brands of the stray, shall be entered by the justice in a book to be kept by him for that purpose.

(*a*) *Vide* the act regulating inclosures.

Justice to deliver duplicate copies of entries, &c.

SEC. 7. The justice shall deliver to such taker up two certified copies of the entry upon his stray book, one of which he shall, within fifteen days after such appraisement, cause to be delivered to the clerk of the county tribunal.

Justice to give taker up a statement of his duties.

SEC. 8. Such justice shall give to the taker up a written statement of the duties required by law to be performed by such taker up.

Taker up to set up notices in the township; what to contain

SEC. 9. The taker up shall, immediately after the appraisement, cause a notice to be set up at three of the most public places in the township in which the stray is posted, which shall contain a copy of the entry on the justice's stray book.

Clerk of county tribunal to record justice's certificate.

SEC. 10. The clerk of the county tribunal, immediately after receiving the certificate of any stray from the justice, shall record the same in a book to kept for that purpose.

Secretary of territory to contract for printing advertisements of strays.

SEC. 11. The secretary of the territory shall select and contract with one printer on the north side of the Kaw river, to print all advertisements of strays required by law to be published on that side of the river, and another printer on the south side of that river, to print all such advertisements on the south side of that river.

To notify clerks of the printer contracted with.

SEC. 12. The secretary of the territory, immediately after contracting with any printer, shall notify the clerk of each county tribunal, on that side of the river, of the name and residence of the printer, and the price of advertisements.

Duty of printer of advertisements of strays.

SEC. 13. Such printer shall, once in each month, issue a newspaper, or printed sheet, in which he shall give one insertion to all advertisements of strays sent to him; and shall send one copy of such monthly sheet to the clerk of each county tribunal on his side of the river.

Clerk shall file and preserve advertisements.

SEC. 14. Such clerk shall receive, file, and preserve in his office, all such papers sent him, for the inspection of all persons who desire to examine them.

Compensation of printer.

SEC. 15. Such printer shall receive, for each stray mentioned in the advertisement, a sum, agreed by the secretary of the territory to be paid, in the contract, not to exceed fifty cents.

Contracts with printers to commence and end on the first of October.

SEC. 16. The secretary shall contract with printers on the first day of October after this act takes effect, and such contracts shall terminate and be renewed on the first day of October, annually.

Vacancies in office of printer, how filled.

SEC. 17. Vacancies in the office of printer shall be filled by the secretary of the territory, by new contracts, as soon as he shall have given reasonable notice to all the printers in the district.

Copies of appraisement to be transmitted to printer, when; fees, &c., by whom paid.

SEC. 18. If the owner of any stray horse, mule, or ass, do not prove it, according to law, within twenty days from the time the same was taken up, the person taking it up shall pay to the clerk all fees, the necessary postage and the price of advertisement, and the clerk shall immediately transmit, by mail or otherwise, to the proper printer a copy of the appraisement of the stray, and shall account to the printer for all money received by him.

Appraisement of neat cattle, &c., not to be sent to printer.

Sec. 19. The clerk shall not transmit to such printer a copy of the appraisement of any neat cattle, sheep, hog or goat.

Taker up may use stray, how.

Sec. 20. Any person may use or work a stray, legally taken up by him, if he do so with care and moderation, and do not abuse or injure it.

How owner may prove his property; when entitled to receive it.

Sec. 21. The owner of any stray may, within one year from the time of taking up, prove the same by evidence before a justice of the peace, and, upon the payment of all costs, he shall be entitled to receive the stray.

Allowance to taker up, how settled.

Sec. 22. If the owner and taker up cannot agree in the amount of such allowance, it shall be settled by some justice of the peace, who shall take into consideration the trouble and expense of the taker up, and whatever use or service he may have had of such stray.

Title of taker up to the stray complete, when.

Sec. 23. If the owner fail to comply with the two preceding sections for one year after the time of taking up, and the taker up shall have complied with this law, a complete title to such stray shall vest in the taker up. (*c*)

Taker up to pay into the county treasury, when.

In default of payment, county hold a lien.

Sec. 24. In all cases where the title to any stray property shall vest in the taker up by lapse of time, the taker up shall pay into the county treasury, after deducting all costs, one-half of the appraised value of such stray, to the use of the school fund of the county where the same shall be, and in default of such payment, the county shall hold a lien on such property to secure payment of said moiety to the county; and by order of the county tribunal such stray may be sold by the sheriff, and after paying said amount due the county, the residue shall be paid to the taker up, after the payment of incidental costs.

Amount paid into treasury, subject to be paid to real owners

Sec. 25. The amount of money required to be paid into the county treasury by the taker up of any stray or strays, as is provided in the above section, shall remain in the treasury, subject to be paid over to the real owner of any such stray or strays, at any time within twelve months after the same has been paid in, provided such owner shall produce satisfactory proof that he or

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(c) A party who wishes to detain property as a stray, must show an exact compliance with the law on the subject of taking up strays, both on his own part and on that of the justice before whom the appraisement is made; Harryman vs. Titus, 3 Missouri Rep., 302; Crook & Thruston vs. Peebly, 8 Missouri Rep., 344. A person claiming an estray, as taken up, must show that all the pre-requisites of the law have been complied with; he must show the performance of all those acts which the law requires to be performed, in order to vest the property of the estray in him; Crook & Thruston vs. Peebly, 8 Missouri Rep, 344.

she was the real owner of any such stray or strays at the time the same was taken up.

When taker up not liable for escape or death.

Sec. 26. If any stray, legally taken up, get away or die, without the fault of the taker up, he shall not be liable for the same.

Reward for taking up a stray.

Sec. 27. There shall be allowed the following reward for taking up strays: *First*, for every horse, mule or ass, fifty cents; *second*, for every head of neat cattle, twenty-five cents; *third*, for all other kinds of animals, fifteen cents each.

Fees of clerks.

Sec. 28. The clerk shall receive the following fees for his services in relation to strays: *First*, for recording each certificate of a stray, fifty cents; for recording each certificate of appraisement, twenty-five cents, whether such certificate contain a greater or less number of animals.

Fees of justice; all animals included in one certificate.

Sec. 29. The justice of the peace shall receive the sum of fifty cents for each certificate of strays taken up and appraised before him, and shall put in one certificate all the animals taken up by any one person, at any one time.

Penalty for disposing of stray, or taking it out of the territory before title vested in taker up.

Sec. 30. If any person shall sell or swap, or take out of this territory any stray, before the legal title shall have vested in him, he shall forfeit to the county double the value of such stray, and may also be punished by imprisonment, on indictment, not exceeding one year, and forfeit to the owner double its value.

Penalty for taking up, using or working strays contrary to this act.

Sec. 31. If any person unlawfully take up any stray, or take any stray and fail to comply with this act, or use or work such stray in any manner contrary to this act, or use or work it before having it appraised, or shall keep the same more than three days out of the county at any one time before he acquire title to the same, such offender shall forfeit to the county twenty dollars.

Penalty for failing to comply with this act, &c.

Sec. 32. If any person take up any stray and violate or fail to comply with this act, or abuse or injure such stray, the owner may recover of him double the amount of all injury sustained, with costs.

Penalty on printer or clerk failing to perform his duties.

Sec. 33. If any printer, clerk, or justice of the peace, fail to perform the duties enjoined on him by this act, he shall forfeit to the county not less than five nor more than fifty dollars, and pay to the party injured not less than five nor more than ninety dollars.

This act to take effect and be in force from and after its passage.

CHAPTER 154.

SURVEYORS.

An act concerning the office of county surveyor.

§ 1. County surveyor, how appointed, tenure of office.
2. Oath of office, bond, &c., condition of the bond.
3. Certificate of appointment.
4. Duty of surveyor in executing orders of court.
5. Duty when required by an individual.
6. What surveys shall be legal evidence.
7. When county surveyor is interested, how survey to be made.
8. Duties of, in keeping records, &c.
9. Lands divided by county lines, may be surveyed by surveyor of county in which any part lies.
§ 10. Title in dispute of lands divided by county line, how surveyed.
11. Chainmen and markers to take oath, when.
12. Compensation of chainmen and markers.
13. Chainmen and markers may be provided by party, when. Deputies, how to be appointed.
14. Tribunal authorized to obtain copy of field notes.
15. Compensation to surveyors for field notes.
16. Certified copies, evidence.
17. Fees of surveyors.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

County surveyor to be appointed.

SECTION 1. The tribunal transacting county business shall appoint some suitable person county surveyor in each county in this territory, who shall hold his office for the term of four years, and until his successor is duly appointed and qualified.

To take an oath of office and enter into bonds, &c.

SEC. 2. Such county surveyor, before entering upon the discharge of the duties of his office, shall take and subscribe the oath of office prescribed by law, and shall also enter into bond, with good and sufficient security, in such sum as shall be required by the tribunal transacting county business, conditioned that he will faithfully discharge the duties of his office.

Certificate to be granted by tribunal.

SEC. 3. The tribunal transacting county business shall grant to such county surveyor a certificate of his appointment, signed by the president of such tribunal, and attested by the clerk thereof, under the official seal, which, together with the oath of office endorsed thereon, and his official bond, shall be filed and recorded in the recorder's office of the county.

Duty of surveyor in executing orders of court.

SEC. 4. The county surveyor shall execute all orders to him directed, by any court of record, for surveying or re-surveying any tract of land, the title of which is in dispute before such court, and all orders of survey for the partition of real estate.

Duty, when required by an individual.

SEC. 5. The county surveyor shall, within ten days, when called upon, survey any tract of land, or town lot, lying in his county, at the expense of the person demanding the same, providing his legal fees are first tendered.

What surveys shall be legal evidence.

Sec. 6. No survey, or re-survey, hereafter made by any person, except the county surveyor, or his deputy, shall be considered legal evidence in any court within this territory, except such surveys as are made by the authority of the United States, or by mutual consent of the parties.

When county surveyor is interested, how survey to be made.

Sec. 7. When it shall appear that the county surveyor is interested in any tract of land the title of which is in dispute before the court, the court shall direct the survey or re-survey to be made by some capable person, who is in nowise interested, who shall be authorized to administer oaths in the same manner as the county surveyor is directed to do, and shall return such survey, or re-survey, on oath or affirmation; and shall receive for his services the same fees that the county surveyor would receive for similar services.

Duties of county surveyor in keeping records, &c.

Sec. 8. The surveyor of each county shall, *first*, keep a fair and correct record of all surveys made by himself and deputies, in a book to be by him procured for that purpose; *second*, number his surveys progressively; *third*, file and preserve a copy of the calculation of each survey, endorsing thereon its respective number; and, *fourth*, deliver a copy of any survey to any person requiring the same, on payment of the fees allowed by law.

Lands divided by county line, may be surveyed by surveyor of county in which any part lies.

Sec. 9. Any person owning or claiming lands where the same are divided by a county line, the person owning or claiming such lands, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situate, and, on such application being made, the surveyor is authorized and required to make such survey, which shall be as valid as though such lands were situate entirely in one county.

Title in dispute of lands divided by county line, how surveyed.

Sec. 10. When lands, the title of which is in dispute before any court, shall be divided by a county line, the court making an order of survey may direct such order to the surveyor of any county in which any part of such lands is situate.

Chainmen and markers to take oath, when.

Sec. 11. Each chainman and marker, employed by the county surveyor or his deputy, shall, before he commences the duty assigned him, take an oath or affirmation faithfully and impartially to execute the duties of chainman or marker (as the case may be), which oath or affirmation the county surveyor or his deputy is authorized and required to administer.

Compensation of chainmen and markers.

Sec. 12. Each chainman and marker shall be allowed one dollar and fifty cents for each day he is actually employed, which shall be paid by the party at whose request the survey is made.

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Sec. 13. The chainmen and markers may be provided by the party requesting the survey, if approved by the surveyor; [illegible] uties may be appointed by any surveyor, who, before they proceed to discharge their duties, shall take an oath, well, truly and faithfully to discharge the duties of deputy surveyors.

Deputies, how to be appointed.

SEC. 14. The tribunals transacting county business in each county in this territory are hereby authorized, in all cases wherein they shall consider it to the interest of their counties to obtain from the surveyor general of the territories of Nebraska and Kansas, or from the register of any land office in the land district in which such tribunals are held, a certified copy of so much of the field notes of all surveys lying within their counties, respectively, which have been and may be made by the United States, as relates to the description of the township, section, fractional section, quarter section, and legal subdivisional corners; the variation of the needle at which the east and west boundaries of township or range lines were run; the length of the north and south, as well as east and west sectional lines; also, the fallings of east and west township and sectional lines; the same to be filed in the office of the county surveyor of their counties respectively.

County tribunals authorized to obtain from the surveyor general's office field notes of public surveys, in their county.

SEC. 15. In all cases where the county surveyor shall have, at his own expense, obtained a certified copy, as provided for in the preceding section, the tribunal transacting county business may make a reasonable allowance to said surveyor for said copy, which shall thereafter become the property of the county, and be filed as provided in the fourteenth section of this act: *Provided, however*, that no county surveyor, thus furnished with the field notes, shall, when called upon to execute any survey, make any additional charge therefor.

County surveyors to be allowed a reasonable compensation, when they have furnished themselves with said copies.

Proviso.

SEC. 16. In all cases where such copies are filed, a copy of such copies, certified by the county surveyor, shall be evidence in all cases where the same is drawn in question in any judicial proceedings.

Certified copies of such copies, evidence.

SEC. 17. The county surveyors shall be allowed fees for their services as follows: For every survey actually made, two dollars, and the further sum of two cents for every chain, lineal measure, above one hundred chains; for calculating the quantity of every tract of land, not divided, seventy-five cents; for calculating the quantity of each division made in a tract of land, town lots excepted, seventy-five cents; for making each plat, twenty-five cents; for recording a plat and certificate, fifty cents; for every copy of a plat and certificate, fifty cents; for travelling to the place of survey and returning, for every mile, six cents; for establishing and planting each corner, under the act to perpetuate testimony, one dollar and a half; for recording each certificate, under the same act, one dollar; for each

Fees of surveyors.

day's attendance as a witness, under the same act, two dollars; for delivering depositions to the recorder, under the same act, fifty cents.

This act to take effect and be in force from and after its passage.

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CHAPTER 155.

TOWNS—INCORPORATION OF.

An act for the incorporation of towns, and to prevent the circulation of town and city scrip.

Article I. Of the election, power, &c., of the trustees.
II. Of the drawing and paying warrants.

ARTICLE I.

Of the election, power, &c., of the trustees.

§ 1. May be incorporated on petition of inhabitants, boundaries, style of.
2. Corporate powers vested in trustees, how appointed and elected.
3. Qualifications of trustees, term of office.
4. Oath of office, meeting and appointment of officers.
5. Board of trustees, how constituted; quorum may compel attendance, how.
6. Trustees to judge of elections, &c.; make their own rules, &c.; keep a journal of proceedings; ayes and noes when to be entered; proceedings to be published.
7. What by-laws and ordinances the trustees may pass.
8. Power to appoint certain officers, &c.; prescribe their duties.
9. Power to pave streets, side-walks, &c.; proceedings to be had against owner refusing to pave; remedy of tenant.
10. Proceedings against property of non-residents.
11. Taxes, how to be collected.
12. Fines and forfeitures, how recovered; who competent as jurors, witnesses, &c.
13. How and when real estate sold for taxes may be redeemed.

§ 14. Chairman to report amount of moneys received, how and when; how published.
15. Penalty on chairman neglecting to publish report.
16. Chairman to publish and enforce ordinances; in his absence, who may act.
17. Vacancies in the board of trustees, how filled.
18. Judges of election, how appointed.
19. Judges of election to give notice of election, how and when.
20. Judge of election not attending, another to be appointed, how.
21. Qualifications of electors.
22. Clerk of election to be appointed, duty of.
23. Election, how long to be kept open; how conducted.
24. In case of a tie, judges to decide by lot.
25. Failure to hold an election, a majority of judges may order an election.
26. County tribunal may disincorporate, when.
27. When the court shall not disincorporate.
28. Dissolution not to affect the rights for or against the corporation.

§ 29. Court to appoint a trustee to act for the corporation dissolved.
30. Oath and bond of trustee, condition of.
31. Powers and duties of the trustee.
32. Trustee to make a report to the county tribunal.
§ 33. Duty of the trustee when the affairs of the corporation are closed.
34. Compensation of trustee.
35. Revenue, &c., accruing to a town disincorporated, to be paid to county tribunal; how to be held.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

May be incorporated on petition of inhabitants; boundaries.

SECTION 1. Whenever two-thirds of the inhabitants of any town or village within this territory shall present a petition to the probate court of the county, setting forth the metes and bounds of their village and commons, and praying that they may be incorporated and a police established for their local government, and for the preservation and regulation of any commons appertaining to such town or village, and the court shall be satisfied that two-thirds of the taxable inhabitants of such town or village have signed such petition, and that the prayer of the petitioners is reasonable, the probate court may declare such town or village incorporated, designating in such order the metes and bounds thereof; and thenceforth the inhabitants within such bounds shall be a body politic and corporate, by the name and style of "The inhabitants of the town of ———" (naming it); and by that name they and their successors shall be known in law, have perpetual succession, unless disincorporated, sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions, pleas and matters whatsoever; may grant, purchase, hold and receive property, real and personal, within such town, and no other, (burial grounds and cemeteries excepted,) and may lease, sell and dispose of the same for the benefit of the town, and may have a common seal, and break and alter the same at pleasure.

Corporate powers vested in trustees; how appointed and elected.

SEC. 2. The corporate powers and duties of every town so incorporated shall be vested in a board of trustees, to consist of five members; the first board of trustees shall be appointed by the probate court, at the time of declaring such town incorporate, who shall continue in office until their successors are elected and qualified, and such successors shall be chosen by the qualified electors, residing in such town, on the first Monday of April in every year, in the manner hereinafter provided.

Qualifications of trustees, term of office.

SEC. 3. No person shall be a trustee who shall not have attained the age of twenty-one years; who shall not be a free white male citizen of the United States; who shall not be an inhabitant of the town at the time of his election, and resided therein for one whole year next preceding; who shall not be a householder within the limits of such town; and every trustee shall hold his office for the term of one year, and until a successor is elected and qualified.

Oath of office, meeting and appointment of officers.

SEC. 4. Every trustee, before entering upon the duties of his office, shall take an oath to support the constitution of the United States and an act to organize the territory of Kansas, and faithfully to demean himself in office; and every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman of their number, and some other person as clerk; the board of trustees shall, by ordinance, fix the time and place for holding their stated meetings, and may be convened by the chairman at any time.

Board of trustees, how constituted, &c.

SEC. 5. At all meetings of the board, a majority of the trustees shall constitute a quorum to do business; a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the board of trustees previously, by ordinance, may have prescribed.

Trustees to judge of elections; make their own rules; keep a journal of their proceedings, &c.

SEC. 6. The board of trustees shall judge of the qualifications, elections and returns of their own members, and determine contested elections; they may determine rules for their own proceedings, punish any member or other person for disorderly behavior in their presence, and, with the concurrence of four of the trustees, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and, at the desire of any member, shall cause the yeas and nays to be taken and entered on the journal on any question, resolution or ordinance, and their proceedings shall be public.

What by-laws and ordinances the trustees may pass.

SEC. 7. Such board of trustees shall have power to pass by-laws and ordinances to prevent and remove nuisances; to prevent, restrain and suppress bawdy houses, gambling houses, and other disorderly houses, within the limits of such town or any common thereto attached; to restrain and prohibit gambling; to provide for licensing and regulating dram-shops and tippling-houses, theatrical and other amusements, within such town; to restrain or prevent the meeting of slaves; to prohibit the firing of fire-arms; to prevent furious and unnecessary riding or driving of any horse or other animal within such town, or such part thereof as they may think proper; to establish night watches and patrols; to erect and maintain poorhouses and hospitals; to prevent the introduction and spreading of contagious diseases; to prevent and extinguish fires; to establish and regulate markets; to erect and repair bridges; to erect, repair and regulate wharves and the rates of wharfage; to regulate the landing of steamboats, rafts and other water craft; to provide for the inspection of lumber, building materials, and provisions, to be used or offered for sale in such town, or to be exported therefrom; to borrow money for the improvement of such town or to supply the same with water; to open and form public squares, avenues, drains and sewers, and to keep the same clean and in order; to open, clear, regulate, graduate, pave or improve the streets and alleys of such town; to impose and appropriate fines, forfeitures and penalties for breaches of their ordinances; to levy and collect taxes; to regulate the inclosure of any common-field belonging to, or within the limits of, such town; and to pass such other by-laws and ordinances for the regulation and police of such town and commons thereto appertaining as they shall deem necessary, not repugnant and contradictory to the laws of the land.

Power to appoint certain officers.

SEC. 8. Such board of trustees shall have power to appoint an assessor, collector, constable, and such other officers, servants and agents as may be necessary, remove them from office, prescribe their duties and fix their compensation.

Power to pave streets, side-walks, &c.

Proceedings against owner refusing to pave.

SEC. 9. Such board of trustees shall have power to have the streets and alleys opened and repaired, and the foot-ways and side-walks of the streets paved, at the expense of the owners or occupiers of the adjacent lots; and if any such owner or occupier fail to open, repair or pave the same as required by ordinance, such board of trustees shall cause the same to be done, and may recover the full expense thereof from such owner or occupier, by action of debt, in the name of the corporation, before any court of competent jurisdiction; and if any tenant be required to open, repair or pave in front of the property occupied by him, the expense thereof shall be a good set-off against so much of the rent due the owner; but no tenant shall be required to expend more than the rent for the term for which he occupied the property.

Remedy of tenant.

Proceedings against property of non-residents.

SEC. 10. If any person who is a non-resident of such town fail to open, repair or pave when required as aforesaid, such board of trustees may cause such lot or lots to be sold to defray the expenses of such improvement, in such manner as the board may, by ordinance, provide.

Taxes, how to be collected.

SEC. 11. If any person fail to pay any tax levied on his real or personal property, the town collector may recover the same by action of debt, in the name of the corporation, before any court of competent jurisdiction; and such collector may, in like manner, collect the amount of taxes due from any non-resident from any tenant or debtor of such non-resident; but no tenant shall be compelled to pay more than the rent of such property, and the amount thus paid by him shall be a good set-off against the owner of the property; and if such non-resident's taxes be not otherwise paid, the property may be sold to pay the same, at public sale, in such manner as the board of trustees shall, by ordinance, provide.

Fines and forfeitures, how recovered; who competent as witnesses, jurors, &c.

SEC. 12. All fines, forfeitures and penalties, accruing to such town, may be recovered by action of debt, in the name of the corporation, before any justice of the peace, subject to an appeal to the higher courts of the territory, and persons living in said town shall be competent jurors and witnesses, if in other respects competent and qualified.

How and when real estate sold for taxes may be redeemed.

SEC. 13. If any real estate be sold by virtue of an ordinance of such town, the owner thereof may redeem the same at any time within two years from the day of sale, by paying the purchase money, and all costs and penalties incurred, together with the interest thereon, at the rate of twenty per centum per annum until paid.

Chairman to report amount of moneys, how and when; how published.

SEC. 14. The chairman of each board of trustees shall, on the first day of March and September in each year, make out a correct statement of all moneys received and expended on account of their respective towns, during the six months next preceding, and shall cause such statement, within ten days thereafter, to be published in some newspaper printed in the same town, if there be any, and if not, then he shall cause copies of such statement to be put up in six of the most public places in such town, within ten days.

Penalty on chairman neglecting to publish report.

SEC. 15. If the chairman of the board of trustees of any town shall at any time neglect to make and cause such statement to be published as required by this act, he shall forfeit for every such neglect the sum of fifty dollars, to be recovered by action of debt in any court of record, one-half whereof, shall be to the use of such town, and the other half to the use of any person who will sue for the same.

Chairman to publish and enforce ordinances; in his absence, who may act.

SEC. 16. The chairman of the board shall cause to be printed and published the by-laws and ordinances of the board for the information of the inhabitants, and cause the same to be carried into effect; he shall remain in office for the term for which he is appointed or elected a trustee, but in case of his absence at any meeting of the board, the board may appoint a chairman *pro tempore*.

Vacancies in the board of trustees, how filled.

SEC. 17. All vacancies in the board of trustees shall be filled by a special election, ordered by the chairman of the board, after ten days' public notice thereof being given.

Judges of election, how appointed.

SEC. 18. Each board of trustees shall, as often as may be necessary, appoint three qualified voters as judges of the election, to superintend and conduct all elections for trustees, or other officers required to be elected, and such trustees shall supply all vacancies which may happen in the office of judges of elections.

SEC. 19. The judges of elections shall give public notice of the time and place of holding each election, by advertisement published in some newspaper in their town, or by handbills put up in six public places in such town, not less than ten nor more than twenty days previous to the election.

To give notice of election, how and when.

SEC. 20. If, on any day apppointed for holding any election, any of the judges shall fail to attend, the electors present may appoint a judge or judges of election, to hold such election, who shall be qualified as required by this act, and all elections shall be by ballot.

Judge of election not attending, proceedings.

SEC. 21. All free white male persons, citizens of the United States, of the age of twenty-one years, residing within the limits of any incorporated town or city, and who shall have resided within the same for six months next preceding an election, shall be entitled to vote at all elections of town officers, and no property qualification shall be required of any person to render him eligible to any office in any incorporated town.

Qualifications of electors.

SEC. 22. The judges of elections shall appoint a clerk who shall write down the names of all persons whose votes shall be received, and the names of those whose votes are rejected, in separate columns.

Clerk of election to be appointed; his duties.

SEC. 23. The election shall be kept open from ten o'clock in the forenoon until six o'clock in the afternoon; after the election is closed, the judges shall examine the ballots, and the five duly qualified persons, who shall have received the highest number of votes, shall be declared duly elected trustees.

Election, how long to be kept open; how conducted.

SEC. 24. In cases of a tie, the judges shall determine the election, between the persons so having an equal number of votes, by lot, and the judges shall make out and deliver to each person elected a trustee, a certificate of his election.

In case of a tie, judges to decide by lot.

SEC. 25. In case of the failure of any election of trustees or other officers, a majority of the trustees then in office may cause the election to be held on any other day.

On failure to hold election, proceedings.

SEC. 26. The probate court of each county shall have power to disincorporate any town which they may have incorporated, upon petition of three-fourths of the legal voters of such town.

Probate court may disincorporate, when.

SEC. 27. No corporation shall be dissolved by virtue of this act, unless it shall appear to the satisfaction of the court that notice has been given of the intended application for a dissolution of the corporation, by advertisement published in a newspaper nearest the town prayed to be disincorporated, for at least eight weeks successively prior to such application, nor until all their liabilities have either been paid or secured to the satisfaction of the probate court of the proper county.

When the court shall not disincorporate.

Dissolution not to affect the rights for or against the corporation.

SEC. 28. No dissolution of any corporation under this act shall invalidate or affect any right, forfeiture or penalty accruing to such corporation, or invalidate or affect any contract entered into or imposed upon such corporation.

Court to appoint a trustee.

SEC. 29. Whenever the probate court shall dissolve any corporation, they shall appoint some competent person to act as trustee for the corporation so dissolved.

Oath and bond of trustee.

Condition of bond.

SEC. 30. The trustee, before entering upon the discharge of his duties, shall take and subscribe an oath before some judge or justice of the peace, that he will faithfully discharge the duties of his office, and shall, moreover, give bond with sufficient security, to be approved of by the court, to the use of such disincorporated town, conditioned for the faithful discharge of the duties of his office.

Powers and duties of the trustee.

SEC. 31. The trustee shall, as soon as possible, prosecute or defend to final judgment all suits instituted by or against the corporation, collect all money due to the same, liquidate all lawful demands against the same, and for that purpose shall sell any property belonging to such corporation, or so much thereof as may be necessary, and, generally, do all acts requisite to bring to a speedy close all the affairs of the corporation.

Trustee to make report.

SEC. 32. The trustee shall make a report of his proceedings to the probate court at each term thereof.

Duty of trustee when the affairs are closed.

SEC. 33. When the trustee shall have closed the affairs of the corporation, he shall pay over to the county treasurer all moneys remaining in his hands, and deliver to the clerk of such court all books, papers, records and deeds belonging to the dissolved corporation.

Compensation of trustee.

SEC. 34. The trustee shall receive for his services such compensation as the court shall think reasonable.

Revenue, &c., accruing to town disincorporated, to be paid to county tribunal, &c.

SEC. 35. If any town disincorporated as aforesaid have an annual revenue accruing thereto, the same shall be paid to the county treasurer by the persons owing the same; and all moneys thus paid, as well as all moneys paid them by the trustee, shall be held and disposed of by the court for the benefit of such town, and may be applied by the court to any specific object, upon the petition of a majority of the taxable inhabitants of such town.

ARTICLE II.

Of the drawing and paying warrants.

§ 1. Warrants upon the town treasury, how to be drawn, printed, &c.
2. To be drawn in favor of the person to whom the debt is due.
3. Payment not to be made except to the person in whose favor the warrant is drawn, or his assignee, &c.
§ 4. Warrants may be assigned, form of assignment.
5. Twenty-first section of first article extended to all cities and towns.

Warrants upon the town treasury, how to be drawn, printed, &c.

Section 1. In all cases where any town in this territory shall be indebted to any person, on any account whatever, a warrant shall be drawn on the treasurer or other officer having the legal custody of the moneys of such city or town, for the whole amount found due to such person by the tribunal or officer having the power to audit and allow claims against such city or town, and to draw warrants therefor; and such tribunal or officer shall not, in any case, draw more than one warrant, for the amount allowed to the same individual, at the same time.

To be drawn in favor of the person to whom the debt is due.

Sec. 2. All warrants drawn on the treasurer or other proper officer of any city or town, shall be drawn in favor of the person to whom the amount thereof shall be allowed, and of no other person.

Not to be paid unless presented by person in whose favor it is drawn, &c.

Sec. 3. No treasurer or other officer of any city or town, in this territory, shall pay any warrant drawn on him, unless such warrant be presented for payment by the person in whose favor such warrant is drawn, or by his assignee, executor or administrator.

Warrants may be assigned.

Sec. 4. All such warrants shall be assignable, and every assignment of any such warrant shall be by endorsement thereon.

Twenty-first section of first article extended to all cities and towns.

Sec. 5. The provisions of the twenty-first section of the first article of this act shall be applicable to all towns incorporated under this act, and to all towns and cities incorporated in any other manner.

This act to take effect and be in force from and after its passage.

CHAPTER 156.

TOWN PLATS.

An act concerning the plats of towns and villages.

§ 1. Map of every town or addition to be made; what it shall set forth and describe.
2. How to be acknowledged.
3. Map to be deposited in the recorder's office.
4. Recorder to preserve the same.
5. Penalty for selling, or offering for sale, before map is recorded.
6. What such map shall convey.
§ 7. Penalty if the map does not set forth the facts truly.
8. Forfeitures, how recovered.
9. Property of person incurring forfeiture may be attached.
10. When a town is thrown into a new county, plat to be transmitted to the new county.
11. Plats of towns and villages to be filed with the recorder.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Map of every town or addition to be made; what it shall set forth and describe.

SECTION 1. Whenever any town or village, or any addition to any town or village, shall be laid out, the proprietor or proprietors of such town or village, or addition, shall cause to be made out an accurate map or plat thereof, particularly setting forth and describing, *first*, all the parcels of ground within such town, village or addition, reserved for public purposes, by their boundaries, course and extent, whether they be intended for avenues, streets, lanes, alleys, commons or other public uses; and, *second*, all lots intended for sale, by numbers, and their precise length and width.

How to be acknowledged.

SEC. 2. Such map or plat shall be acknowledged by the proprietor, before some court or officer authorized by law to take the acknowledgment of conveyances of real estate.

Map to be deposited in recorder's office.

SEC. 3. The map or plat so made, acknowledged and certified, the proprietor shall deposit in the office of the recorder of the county in which the town, village, or addition is situate.

Recorder shall preserve the same.

SEC. 4. The recorder shall preserve such map or plat in his office among the records thereof.

Penalty for selling or offering for sale before map is recorded.

SEC. 5. If any person sell, or offer for sale, any lot within any town, village, or addition, before the map or plat thereof be made out, acknowledged and deposited as aforesaid, such person shall forfeit a sum not exceeding three hundred dollars for every lot which he shall sell or offer to sell: (*a*) *Provided*, that this section shall in nowise apply to towns and villages heretofore laid out, or which shall be laid out prior to the organization of

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(*a*) When a person sold a town lot before the plat of the town was made out, acknowledged and deposited in the recorder's office, the contract was held absolutely void; Downing vs. Ringer, 7 Missouri Rep., 585.

counties, and the appointment and qualification of officers therein; but in all such cases, the proprietor or proprietors of such towns or villages shall file, within three months after the establishment of the office of recorder in the respective counties, the plats or additions required to be filed by the third section of this act.

What such map shall convey.

SEC. 6. Such maps and plats of such towns and villages, and additions, made, acknowledged, certified and deposited with the recorder, shall be a sufficient conveyance to vest the fee of such parcels of land as are therein expressed, named or intended, for public uses in the county in which such town, village or addition is situate, in trust and for the uses therein named, expressed or intended, and for no other use or purpose.

Penalty, if the map does not set forth the facts truly.

SEC. 7. If any person, his agent or attorney, shall cause a map or plat of any such town, or village, or addition, to be deposited with the recorder, which does not set forth and describe all parcels of ground, *and* which have been or shall be promised, or set apart for public uses, and other lots, such person shall forfeit double the value of the ground so promised, or pretended to have been set apart for public uses, and not set forth on the map or plat.

Forfeitures, how recovered.

SEC. 8. The forfeitures arising under this act may be recovered by action of debt, with costs, in the name of, and to the use of, the county.

Property of person incurring forfeiture, may be attached.

SEC. 9. The property and effects of the person incurring such forfeiture may be proceeded against, by attachment or otherwise, in like manner, and for the like causes, as in ordinary cases of debt.

When a town is thrown into a new county, plat to be transmitted to the new county.

SEC. 10. When any town plat shall be deposited with the recorder of the county, and by reason of the establishment of any new county, or the alteration of any county lines, the town or village shall fall within a different county, such recorder shall transmit such plat to the recorder of the county within which such town or village may be.

Plats of towns and villages, to be filed with the recorder.

SEC. 11. The plats of all towns and villages which have heretofore been laid off, or which may hereafter be laid off on the public lands within this territory, shall be filed with the recorder as aforesaid, which plats shall accurately set forth the streets, squares, alleys, parks and avenues, and the width and extent thereof, which are intended for public use, and, when so filed, they shall be deemed a sufficient conveyance of such streets, squares, alleys, parks and avenues to such purposes; and any person occupying or in anywise obstructing such streets, squares, alleys, parks or avenues, shall be held liable for damages as if such streets, squares, parks or avenues had been absolutely conveyed to public use as in the third section specified.

This act to take effect and be in force from and after its passage.

CHAPTER 157.

TOWNSHIPS.

An act for the organization of townships.

§ 1. Tribunal may divide counties into townships.
§ 2. Duty of clerk of tribunal.
§ 3. Whole of a town to be in one township.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Tribunal may devide counties into townships.

SECTION 1. The tribunal transacting county business in each county in this territory may divide the county into convenient townships, and, as occasion may require, erect new townships, and sub-divide townships already established or alter township lines.

Duty of clerk of tribunal.

SEC. 2. The clerk of such tribunal shall, within thirty days after the establishment of any township, transmit to the office of the secretary of the territory a description of such township, containing the name and boundaries thereof, and said clerk shall enter such description of record.

Whole of town to be in one township.

SEC. 3. No township line shall pass through any town or common field thereto belonging, but the whole of such town or common field shall be part of one township.

This act to take effect and be in force from and after its passage.

CHAPTER 158.

TREASURY DEPARTMENT.

An act to establish the treasury department, and to define the powers and duties of treasurer and auditor.

ARTICLE I. Of the organization of the department.
II. Of the auditor and his general duties.
III. Of the settlement of claims and accounts.
IV. Of the treasurer.
V. Of miscellaneous provisions.
VI. Of securities.

ARTICLE I.

Of the organization of the department.

§ 1. Auditor and treasurer appointed; offices at seat of government.
2. Treasurer to give bond, condition; auditor to give bond, condition.
3. Securities to write down and swear to what they are worth.
4. Approval and record of bond.
5. No commission to issue until bond and security be given.
6. Auditor and treasurer each to keep a seal of office.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Territorial auditor and treasurer appointed.

SECTION 1. There shall be appointed at the present session of the legislative assembly, by the governor, and with the advice and consent of the legislative council, a territorial treasurer and a territorial auditor of public accounts, who shall hold their offices for four years and until their successors are duly elected and qualified, who shall reside and keep their respective offices at the seat of government; they shall be commissioned by the governor and take the oath of office prescribed by law, which shall be endorsed on their several commissions or certificates of election.

Offices at the seat of government.

Treasurer to give bond. Condition.

Auditor to give bond. Condition.

SEC. 2. The treasurer shall give bond to the territory of Kansas, in the penal sum of ——— thousand dollars, conditioned that he will duly account for all moneys coming into his hands, by virtue of his office; and the auditor shall give like bond in the sum of ——— thousand dollars, conditioned for the faithful discharge of the duties of his office, which several bonds and certificates of appointment, with the oath of office, shall be deposited in the office of secretary of the territory.

Securities to write down and swear to what they are worth.

Sec. 3. Each security, when he shall sign such bond, shall write down in words, at length, opposite his name on the left, the amount he is willing to swear he is worth, and shall make oath, either before the governor or before some judge or justice of the peace, in writing, to be laid before the governor, that he believes himself to be worth the sum written opposite his name, after the payment of all the debts for which he is in anywise liable.

Approval to be recorded, &c.

Sec. 4. The secretary of the territory shall endorse on the bond his approval thereof, stating the time of approval, and file the same in his office.

No commission to issue until bond be given.

Sec. 5. No commission shall issue to an auditor or treasurer until he shall have given bond and security as required by law.

Auditor and treasurer each to keep a seal of office.

Sec. 6. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers and documents, certified from either of such offices, respectively.

ARTICLE II.

Of the auditor and his general duties.

§ 1. Auditor of public accounts declared to be the general accountant and keeper of all public account books, contracts, &c.

§ 2. What the auditor shall report to the general assembly at the commencement of the session.

3. Certain other duties prescribed.

Auditor declared to be the general accountant of territory.

Section 1. The auditor of public accounts is the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

What the auditor shall report to the general assembly at the commencement of each session.

Sec. 2. He shall digest, prepare, and report to the general assembly, at the commencement of each regular session, *first*, a full and detailed statement of the condition of the revenue, and the amount of the expenditures for the two preceding fiscal years; *second*, a full and detailed statement of the public debt; *third*, estimates of the revenue and expenditures for the two succeeding fiscal years; *fourth*, such plans as he may deem expedient for the support of the public credit, for lessening the public expenses, for promoting frugality and economy in the public offices, and, generally, for the better management and more perfect understanding of the fiscal affairs of the territory; *fifth*, a tabular statement showing, separately, the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended; *sixth*, a tabular statement showing the amount of revenue chargeable to each county for the two preceding fiscal years, the aggregate amount of each object of taxation, together with the tax due on the same.

Certain other duties prescribed.

SEC. 3. He shall, *first*, audit, adjust and settle all claims against the territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers and persons; *second*, draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law; *third*, express in the body of every warrant which he may draw upon the treasury for money, the particular fund, appropriated by law, out of which the same is to be paid; *fourth*, audit, settle, and adjust the accounts of the collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury; *fifth*, keep an account between the territory and the territorial treasurer; *sixth*, keep an account of all debts and credits between the territory and the United States, and between the territory and every other state, sovereignty, community, officer or person with whom the territory may have dealings, and of every separate fund in the treasury authorized by law; *seventh*, direct prosecution, in the name of the territory, for all official delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who, by any means, become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the territory; *eighth*, give information, in writing, to either house of the general assembly, whenever required, upon any subject relating to the fiscal affairs of the territory, or touching any duty of his office; *ninth*, perform all such other duties as may be required by law.

ARTICLE III.

Of the settlement of claims and accounts.

§ 1. Collectors and others to exhibit their accounts to the auditor, when; his duties thereon.
2. Balances due the territory to be paid within ten days after settlement; damages for failing to pay.
3. Auditor to issue warrant of distress against delinquent; to whom to be directed.
§ 4. Warrant of distress, how and upon whom to be executed.
5. Property distrained, how advertised and sold; proceeds, when to be paid into the treasury.
6. Compensation of officer collecting money on distress warrant.
7. Claims against the territory to be audited within two years.

§ 8. What claims may be set off against the territory.
9. Auditor may examine parties and witnesses under oath.
10. Vouchers and documents to be preserved in the auditor's office; copies may be given.
11. Auditor to draw warrants, for what; form.
12. No warrant to be drawn or paid unless there is an appropriation, nor from another appropriation.
§ 13. Persons dissatisfied with auditor's decision may have the claim certified to the general assembly.
14. When the auditor shall audit claims and give a certificate,
15. To report to general assembly all collectors whose accounts have remained six months unsettled.
16. Auditor to publish list of defaulting collectors, how.

Collectors and others to exhibit their accounts to the auditor, when; his duties thereon.

SECTION 1. All collectors of the revenue, and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor on or before the first Monday in November in each year, to be audited, adjusted and settled; and the auditor shall proceed, without unnecessary delay, to audit, adjust and settle the same, and report to the treasurer the balance found due.

Balances due the territory to be paid within ten days; damages for failing to pay.

SEC. 2. If any of the persons mentioned in the preceding section shall fail to pay the amount so found due into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the territory the amount of the commission allowed him by law, and also two and a half per centum a month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment, and the auditor shall charge such delinquent accordingly.

Auditor to issue warrant of distress against delinquent.

SEC. 3. The auditor shall, immediately after such delinquency shall occur, issue a warrant of distress against such delinquent and his securities, directed to the sheriff or coroner, as the case may require, of the proper county; or if there be no sheriff or coroner, or they shall be disqualified to act, then to the sheriff of some adjoining county, (who is authorized and required to execute the same, and who, together with his securities, shall be liable on his official bond, in the same manner and to the same extent, as if the writ were to be executed in his own county,) stating therein the amount due, and the penalties and forfeitures.

Warrant of distress, how and upon whom to be executed.

SEC. 4. Such sheriff or coroner shall levy and collect the same, together with the penalties and forfeitures stated in the writ, by the distress and sale of goods and chattels and real estate of such delinquent; and for the want of sufficient goods and chattels and real estate of the delinquent to satisfy such warrant, then by the distress and the sale of the goods and chattels and real estate of the securities of such delinquent.

Property distrained, how advertised and sold.

SEC. 5. Property distrained shall be advertised and sold in such manner, and at such time and place, as is prescribed by law for advertising and selling property by virtue of a writ of *fieri* *facias;* and the sum collected shall be accounted for, and paid into the treasury, within sixty days after its collection, unless the first Monday of November shall intervene, and in that event, then on or before that day.

Proceeds, when to be paid into the treasury.

SEC. 6. The officer collecting money, by virtue of a distress warrant, shall receive the same mileage for paying the same into the treasury, as is allowed by law to collectors for the same service; but if such officer shall be the collector of the revenue, he shall not receive such mileage, if such money be paid at the time of paying the revenue.

Compensation of officer collecting money on distress warrant.

SEC. 7. Persons having claims against the territory shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within two years after such claims shall accrue, and not afterwards.

Claims against the territory to be audited within two years

SEC. 8. In all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory as a set-off, but such as have been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved, to the satisfaction of the court, that the defendant, at the time of the trial, is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the territory, sickness or unavoidable accidents.

What claims may be set off against the territory.

SEC. 9. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses, and others, on oath or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue subpœnas, and compel witnesses to attend before him and give evidence in the same manner and by the same means allowed by law to courts of record. (c)

Auditor may examine parties and witnesses, how.

SEC. 10. All accounts, vouchers and documents, settled or to be settled by the auditor, shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who may require the same.

Vouchers and documents to be preserved in auditor's office, &c.

SEC. 11. In all cases of accounts audited and allowed against the territory, and in all cases of grants, salaries, pay and expenses allowed by law, the auditor shall draw a warrant on the treasurer for the amount due, in the form now used in the treasury department.

Auditor to draw warrants, for what.

SEC. 12. No warrant shall be drawn by the auditor, or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, un-

No warrant to be drawn or paid unless there is an appropriation, &c.

(c) *Vide* the act concerning witnesses, sections three and four.

der any one head, ever exceed the amount appropriated by law for that purpose.

Persons dissatisfied with auditor's decision, may have claim certified to general assembly.

Sec. 13. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, the auditor shall, at the request of such person, certify his decision, with his reasons therefor, specifying the items rejected, if less than the whole, under the seal of his office, and refer the same to the general assembly. (*d*)

When the auditor shall audit claims and give a certificate.

Sec. 14. In all cases where the laws recognize a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and adjust the same, and give the claimant a certificate of the amount thereof, under his official seal, if demanded, and shall report the same to the general assembly with as little delay as possible.

To report to general assembly all collectors in default.

Sec. 15. The auditor shall report to the general assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts have remained unsettled for the space of six months after they ought to have been settled according to law, and the reasons therefor.

To publish list of defaulting collectors, how.

Sec. 16. When the collectors of the revenue, or other holders of the public money, shall fail to pay the amount due by them into the treasury, within the time prescribed by law, the auditor shall within thirty days after such default, publish, for one week, in four newspapers printed at four of the most public places in the territory, a list of all such defaulters, with the amounts respectively due from each.

ARTICLE IV.

Of the treasurer.

§ 1. Duties of the treasurer. | § 2. To give duplicate receipts, &c.

Duties of the treasurer.

Section 1. The treasurer shall, *first*, receive and keep all moneys of the territory not expressly required by law to be received and kept by some other person; *second*, disburse the public moneys upon warrants drawn upon the treasury according to law, and not otherwise; *third*, keep a just, true and comprehensive account of all moneys received and disbursed; *fourth*, keep a just and true account of each head of appropriation made by law,

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(*d*) The supreme court has held that it would grant relief by mandamus; Heard vs. Baber, 8 Missouri Rep., 142; Hutchins vs. State, *ibid*, 288.

and the disbursements made under the same; *fifth*, render his accounts to the auditor for settlement, quarterly, or oftener if required; *sixth*, report to each house of the legislative assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the two preceding years; *seventh*, give information, in writing, to either house of the legislative assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office; and *eighth*, perform all such other duties as may be required by law.

To give duplicate receipts; one to be deposited with the auditor.

SEC. 2. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

ARTICLE V.

Miscellaneous provisions.

§ 1. Auditor and treasurer to have free access to each other's office, books, &c.
2. Shall keep letter book, what to enter therein.
3. Penalty on auditor for issuing a warrant without authority.
4. Penalty on treasurer refusing to pay a warrant.
5. Penalty on auditor and treasurer for neglect of duty, oppression, extortion, &c.
6. Accounts audited and found due, declared to be a lien.
7. Secretary to select members of the general assembly to settle with the auditor and treasurer, when.
8. Oath to be taken by members.
9. Members appointed, to settle, make report and other duties.
§ 10. Vacancy in the office of auditor or treasurer, how filled.
11. Governor to cause settlement to be made with auditor or treasurer in certain cases.
12. Statement of settlement to be delivered to the party entitled to the same, when.
13. When duplicate statements of settlement shall be made.
14. Settlement approved by the legislature, entries to be made; if disapproved, another settlement to be made.
15. Compensation of the person appointed by the governor to act as auditor or treasurer.
16. Compensation of the person appointed to make settlement.
17. Power of auditor and treasurer to administer oaths.

Auditor and treasurer to have free access to each others offices, books, &c.

SECTION 1. The auditor and treasurer shall have free access to each other's offices for the inspection of all books, accounts and papers which they respectively contain, and free access to all the other offices of the territory for the inspection of such books, accounts and papers as concern any of their duties.

To keep letter book; entries therein.

SEC. 2. The auditor and treasurer shall each keep a letter book, in which shall be recorded all official letters which they may write.

Penalty on auditor, for issuing a warrant without authority.

Sec. 3. If the auditor shall, knowingly, issue any warrant upon the treasury not authorized by law, he shall, upon conviction thereof, be fined in a sum not exceeding fourfold the amount of such warrant, and imprisoned for any length of time not exceeding one year, and shall be deemed guilty of a misdemeanor in office.

Penalty on treasurer refusing to pay a warrant.

Sec. 4. If the treasurer shall, wilfully and unlawfully, refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof fourfold the amount of such warrant, to be recovered by action of debt against the treasurer and his securities, on his official bond, or otherwise, according to law, and the treasurer shall be deemed guilty of a misdemeanor in office.

Penalty on auditor and treasurer for neglect of duty.

Sec. 5. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty not allowed by law, or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall forfeit to the territory any sum not exceeding one thousand dollars, and shall be deemed guilty of a misdemeanor in office.

Accounts audited and found due, declaired to be a lien.

Sec. 6. The amount of every account audited, adjusted and found due to the territory, according to this act, with the penalties and interest thereon, is declared to be a lien upon the real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof.

Secretary to select members of the general assembly, to settle with the auditor and treasurer, when.

Sec. 7. On or before the first day of September preceding the regular session of the general assembly, the secretary of the territory shall select and notify one member elected to the council, and two members elected to the house of representatives, to attend at the seat of government, six days before the commencement of the session, for the purpose of settling with the auditor and treasurer.

Oath to be taken by members.

Sec. 8. The members thus selected, before entering on such duties, shall take the oath required by the constitution of members of the legislative assembly, which shall be endorsed and certified on their certificates of election.

Members selected, to settle, make report and other duties.

Sec. 9. The members selected, or a majority of them, shall make such settlement, and make to each house of the legislative assembly a report thereof, and, if they approve the same, shall cause proper entries to be made in the books of the auditor and treasurer's offices, showing the result of such settlement, and immediately thereupon shall cause all the vouchers which shall have been examined and allowed in such settlement to be defaced, by writing in large letters, on the face thereof, the word "cancelled."

Vacancy in the office of auditor and treasurer, how filled.

SEC. 10. In case of the death, sickness, absence from the territory, removal from office, or impeachment, of any auditor or treasurer, the governor may make an appointment, for the time being, of some suitable person to perform the duties of such office until a successor can be appointed according to law, or until such absence or disability shall cease.

Governor to cause settlement to be made with auditor and treasur in certain cases.

SEC. 11. Immediately after the appointment and qualification of any auditor or treasurer, or the resumption of his duties by either officer, (if, in the meantime, an auditor or treasurer *pro tempore* shall have been appointed,) the legislative assembly, if in session, or, if not, the secretary of the territory, shall cause a settlement to be made of the accounts of the former auditor or treasurer, or auditor or treasurer *pro tempore*, remaining unsettled, in the manner provided in the seventh, eighth and ninth sections of this article.

Statement of settlement to be given to the party entitled to the same, when.

SEC. 12. If the legislative assembly shall be in session when such settlement is made, it shall cause to be made out and delivered to the person entitled thereto a certificate of such settlement, showing the balance of moneys, securities and effects for which he is accountable, and what has been delivered to his successor.

When duplicate statements of settlement shall be made.

SEC. 13. If the legislative assembly shall not be in session when such settlement is made, the persons appointed by the governor to make such settlement, shall make out duplicate certificates of such settlement showing what is required to be shown in the certificate to be made out according to the provisions of the preceding section, one of which shall be delivered to the person entitled thereto, and the other to the governor, to be laid before the legislative assembly at its next session.

Proceedings, if settlement approved by the legislature; proceedings, if disapproved.

SEC. 14. When the certificate mentioned in the next preceding section shall be laid before the legislative assembly, if it approve the same, it shall cause the proper entries to be made in the books of the auditor and treasurer; and if it disapprove thereof, it shall cause another settlement to be made.

Compensation of person appointed to act as auditor or treasurer.

SEC. 15. Any person appointed by the secretary of the territory, in virtue of the tenth section of this act, shall receive the same compensation allowed by law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service.

Compensation of person appointed to make settlement.

SEC. 16. The persons appointed by the governor to make settlement with the auditor and treasurer, shall receive the same compensation as is allowed by law to members of the legislative assembly, during the time they may be engaged in such service.

Power of auditor and treasurer to administer oaths.

Sec. 17. The auditor and treasurer shall each have power to administer all oaths and affirmations required by law, in matters touching the duties of their respective offices.

ARTICLE VI.

Of securities.

§ 1. Securities on bond of treasurer to take an oath.

§ 2. Treasurer and auditor to receive, for services, per centage on revenue.

Securities offered on bond of treasurer, to take an oath, &c.

Section 1. Each security, offered on the bond of the treasurer of the territory, shall make oath, either before the secretary of the territory, verbally, or before some judge or justice of the peace, in writing, to be laid before the secretary of the territory, that he verily believes himself to be worth the amount set opposite his name, after the payment of all debts for which he is in anywise bound or liable.

Per centage allowed.

Sec. 2. The treasurer and auditor of the territory shall each receive for their services per centage upon the whole amount paid into the territorial treasury, from all sources of revenue, as a compensation for their services.

This act to take effect and be in force from and after its passage.

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CHAPTER 159.

An act explanatory of an act organizing a treasury department.

TREASURY DEPARTMENT.

§ 1. Penalty of bond of treasurer.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Penalty of official bond.

Section 1. The penalty of the official bond of the territorial treasurer shall be in the sum of ten thousand dollars, and the penalty of the bond of the auditor of public accounts shall be in the sum of five thousand dollars.

This act to take effect and be in force from and after its passage.

CHAPTER 160.

TRESPASS.

An act to prevent certain trespasses.

§ 1. Treble damages recoverable for certain trespasses.
2. Throwing down or leaving open doors, bars, gates or fences, forfeiture of five dollars, and double damages.
3. Penalties and damages, how recovered; when to be paid to the county.
§ 4. When single damages only recoverable.
5. Slave committing certain trespasses, owner liable for single damages.
6. Employer or hirer of a slave responsible, when.
7. Defendants may plead the general issue, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Treble damages recovered for certain trespasses.

SECTION 1. If any person shall cut down, injure or destroy, or carry away, any tree, placed or growing for use, shade or ornament; or any timber, rails, or wood, standing, being or growing on the land of any other person; or shall dig up, quarry, or carry away, any stones, ore, or mineral, gravel, clay, or mould, roots, fruits, or plants; or cut down or carry away grass, grain, corn, flax, or hemp, in which he has no interest or right, standing, lying, or being on land not his own; or shall knowingly break the glass, or any part of it, in any building not his own; the person so offending shall pay to the party injured treble the value of the thing so injured, broken, destroyed, or carried away, with costs. (*a*)

Throwing down or leaving open gates, &c., forfeiture of five dollars, and double damages.

SEC. 2. If any person shall voluntarily throw down or open any doors, bars, gates, or fences, and leave the same open or down, other than those that lead into his own inclosure, he shall pay to the party injured the sum of five dollars, and double the amount of damages the party shall sustain, by reason of such doors, bars, gates and fences having been thrown down or opened, with costs.

Penalties and damages, how recovered; when to be paid to the county.

SEC. 3. All penalties contained in the preceding section may be recovered by action of trespass or debt, founded on this statute, or by indictment, at the option of the party injured, in any

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(*a*) In an action of trespass, under the statute, a general verdict shall be decreed for single damages, unless the contrary appears; George vs. Rooks, 7 Missouri Rep., 149; Withington vs. Young, 4 Missouri Rep., 564; Cooper vs. Maupin, 6 Missouri Rep., 624. In an action of trespass, when the declaration contains counts upon the statute, and at common law, and entire damages are assessed, the damages will not be trebled, it not appearing from the verdict that the damages were assessed upon the statutory counts only; Lowe and Forsythe vs. Morrison, 8 Missouri Rep., 350. Should not a declaration of trespass, under the statute, in order to bring the offence within its terms, aver that the defendant had no interest or right in the property taken away, and that it was on land not his own? *Quere. Ibid.*

court having jurisdiction of the same; and when the proceeding is by indictment, such penalties shall be paid into the county treasury.

When single damages only recoverable.

Sec. 4. On the trial of any action or prosecution brought upon this statute, if it shall appear that the defendant had probable cause to believe that the land on which the trespass is alleged to have been committed, or that the thing so taken, carried away, injured or destroyed, was his own, the plaintiff in the action or prosecution shall receive single damages only, with costs.

Slave committing certain trespasses, owner liable for single damages.

Sec. 5. If a slave commit any of the offences contained in the first and second sections of this act, it shall be lawful for the person injured to bring an action for the recovery of single damages against the owner of the slave, under the same regulations and restrictions as are in this act heretofore provided.

Employer or hirer of a slave responsible, when.

Sec. 6. If such slave, at the time of committing such trespass, shall be in the employment or hire of another person other than the owner, such person shall be accountable for all trespasses such slave shall commit whilst so employed or hired, in the same manner that the owner is made accountable by this act for the trespass of his slave.

Defendants may plead the general issue, &c.

Sec. 7. In all actions and prosecutions founded on this statute, the defendant may plead the general issue, and give any special matter in evidence, giving the plaintiff notice in writing, at the time he pleads the general issue, of the points of the special matter which he intends to give in evidence.

This act to take effect and be in force from and after its passage.

CHAPTER 161.

VAGRANTS.

An act respecting vagrants.

§ 1. Who are deemed vagrants.
2. Keepers of gaming tables, &c., deemed vagrants.
3. Justice of peace to issue warrant to apprehend vagrant.
4. Vagrancy to be established; to be hired out.
§ 5. Minor to be committed or give recognizance, &c., tribunal to direct sheriff to bind him out.
6. Hire of vagrants, how disposed of.
7. Duty of sheriffs and other officers, &c.
8. Grand juries to make presentment; proceedings thereon.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who are deemed vagrants.

Section 1. Every able-bodied person who shall be found loitering or wandering about, not having wherewithal to maintain himself by some visible property, and who does not betake himself to labor or some honest calling to procure a livelihood, and all able-bodied persons who are found begging, and who quit their houses and leave their wives and children without the means of subsistence, shall be deemed and treated as vagrants.

Keepers of gaming tables, &c., deemed vagrants.

SEC. 2. All keepers or exhibitors of any gaming tables or gambling device, and all persons who travel or remain in steamboats, or go from place to place, for the purpose of gaming, shall be deemed and treated as vagrants.

Justice to issue warrant to apprehend such.

SEC. 3. When any such person is found, any justice of the peace of the county shall, upon information, or from his own knowledge, issue his warrant to the sheriff or constable to bring such person before him.

Vagrancy to be established by verdict; vagrant to be hired out.

SEC. 4. If, upon due examination, it shall appear to said justice that he is a vagrant as above set forth, and the fact having been established by the verdict of a jury, which shall in all such cases be summoned and sworn to inquire whether the person be a vagrant or not, he shall make out a warrant under his hand and seal, authorizing the sheriff or constable to keep said vagrant in his custody, until three days' notice can be given by advertisement, set up in the most public places in the county, and to hire out such vagrant at the court-house door, in said county, for the term of six months, to the highest bidder, for cash in hand.

Minor to be committed or give recognizance, &c. Tribunal to direct sheriff to bind him out.

SEC. 5. If such person be a minor, the justice shall commit him to jail, unless such minor enter into a recognizance to appear at the next term of the county tribunal; and it shall be the duty of the county tribunal to direct the sheriff to bind him apprentice to some useful trade or occupation, until he arrives at the age of twenty-one years; and such vagrant minor shall, in all respects, be subject to the laws regulating apprentices.

Hire of vagrants, how disposed of.

SEC. 6. The moneys arising from the hire of any vagrant shall be applied by the justice of the peace, after the payment of costs, to the paying of his debts; if he shall not be indebted, or do not owe the amount of his hire, the same, or balance, shall be paid to such vagrant at the expiration of such time of service, unless he has a wife or children, in which case it shall be applied to their use.

Duty of sheriff and other officers.

SEC. 7. All sheriffs and constables, within the several counties of this territory, shall give information to some justice of the peace of all vagrants, within their knowledge, in their respective counties.

Grand juries to make presentment; proceedings thereon.

SEC. 8. Grand jurors impanneled for a county shall make presentments of all such persons within the county whom they may suspect to be vagrants; and upon any such presentment, the court shall direct some justice to issue his warrant to bring such suspected person before him, and such examination shall be had, and such steps taken, as directed by this act.

This act to take effect and be in force from and after its passage.

CHAPTER 162.

VENUE.

An act providing for the change of venue in civil cases.

§ 1. In what cases a change of venue in civil cases may be awarded.
2. Petition and affidavit for change of venue in civil cases may be presented in vacation.
3. Notice having been given, court may hear and determine.
4. When the court may award a change without application by either party.
5. Change awarded in vacation, order to be transmitted to the clerk where the cause is pending.
6. What copies and papers clerk shall make out and transmit to clerk where cause is removed.
§ 7. The clerk of the court to which the cause is removed, to file papers and docket the cause.
8. Costs of change of venue to be paid by petitioner.
9. Failing to pay costs for fifteen days, now proceeded against.
10. What the clerk shall recover.
11. Failure to send or loss of papers not to operate as a discontinuance of the case; how supplied.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

In what cases a change of venue in a civil suit may be awarded.

SECTION 1. A change of venue may be awarded in any civil suit at law or equity, in any district or probate court, for any of the following causes: ***First,*** that the judge is interested, prejudiced, or is related to, or has been of counsel in the cause for either party; *second,* that the opposite party has an undue influence over the mind of the judge; *third,* that the inhabitants of the county are prejudiced against the applicant; ***fourth,*** that the opposite party has undue influence over the inhabitants of the county.

Petition and affidavit for change of venue may be presented in vacation.

SEC. 2. Any party in such cause may present to the court, or judge thereof in vacation, a petition, setting forth the cause of his application for a change of venue, and shall annex thereto an affidavit to the truth of the petition, and alleging that he has just cause to believe that he cannot have a fair trial on account of the causes alleged.

Notice having been given, court to hear and determine.

SEC. 3. If reasonable notice shall have been given to the adverse party, or his attorney, the court shall hear the case, and award a change of venue to some court where the causes complained of do not exist, as convenient as may be to the opposite party.

SEC. 4. If the judge is interested, or related to, or shall have been of counsel in the cause for either party, the court or judge may award such change of venue, in his discretion, without any application from either party; but neither party shall have more than one change of venue.

When the court may award a change without application.

SEC. 5. If any judge award such change of venue in vacation, he shall immediately transmit to the clerk of the court wherein the cause is pending the petition and affidavit, with a written order for the change of venue.

Proceedings when change is awarded in vacation.

SEC. 6. When any such order shall be made by the court or judge, the clerk shall immediately make out a full transcript of the record and proceedings in the cause, including the petition and affidavit and order of removal, and transmit the same, duly certified, together with all the original papers filed in the cause, and not forming a part of the record, to the clerk of the court to which the removal is ordered; and for failure to do so, shall forfeit one hundred dollars to the party aggrieved, to be recovered by action of debt.

What copies and papers clerk shall make out and transmit to clerk, where cause is removed.

Penalty for neglect

SEC. 7. The clerk of the court to which such cause is certified shall file the same, and the cause shall be docketed, proceeded in and determined as if it had originated therein.

Clerk of court, when cause is removed, to file the papers &c.

SEC. 8. All the costs and expenses attending any such change of venue, made on the application of either party, shall be taxed and paid by the petitioner, and not taxed in the costs of the suit.

Costs to be paid by petitioner.

SEC. 9. If such petitioner fail to pay such costs within fifteen days after the change of venue, such clerk may make out a fee-bill against such petitioner and his securities, (if any,) and deliver the same to any sheriff, who shall levy and collect the same, with fifty per cent. thereon, for the use of the clerk, as other fee-bills.

Failing to pay costs for fifteen days, how proceeded against.

SEC. 10. Such clerk may recover the amount of such fee-bills, and fifty per cent. thereon, by action of debt.

What the clerk shall recover.

SEC. 11. If any clerk fail to transmit the transcript and papers in any cause, the venue whereof has been changed, or if such papers be sent and lost, such loss or failure shall not operate a discontinuance of such cause, but, at the next term of said court, may be filed; or, if lost, copies of the originals may be furnished and filed, and the cause shall proceed as if no such failure or loss had happened.

Failure to send or loss of papers, not to operate as a discontinuance of the cause; how supplied.

This act to take effect and be in force from and after its passage.

CHAPTER 163.

WEIGHTS AND MEASURES.

An act regulating weights and measures.

§ 1. Tribunal to procure standards of weights and measures.
2. When procured, notice to be given; penalty for using false weights, &c.
§ 3. Duty of clerk in sealing weights and measures.
4. What shall constitute the "100 weight" and the "ton."
5. What weight shall constitute a bushel.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Tribunal to procure standards of weights and measures, to be kept by clerk.

SECTION 1. The clerk of each tribunal transacting county business shall provide, at the expense of the county, one measure of one foot, or twelve inches, English measure; one measure of three feet, or thirty-six inches, English measure, denominated one yard; one half bushel measure, which shall contain one thousand seventy-five and one-fifth cubic inches, denominated dry measure; one gallon measure, which shall contain two hundred and thirty-one cubic inches; and one half gallon measure, which shall contain one hundred and fifteen and one-half cubic inches; one quart measure, which shall contain fifty-seven and three-fourths cubic inches; also, one set of weights, called avoirdupois weights; and one seal, with initials of the county inscribed thereon, which measures, weights and seals shall be kept by the clerk of the tribunal aforesaid.

When procured, notice to be given; penalty for using weights, &c., not corresponding.

SEC. 2. So soon as the weights and measures are provided, the said clerk shall cause notice thereof to be given at the court-house door for two months; and any person who shall knowingly keep any measure or weight, and buy or sell any commodity whatsoever by such weight or measure as shall not correspond with the weights and measures deposited in the clerk's office, shall, for every such offence, forfeit and pay to the party injured ten dollars, to be recovered by action of debt before any justice of the peace of the county.

Duty of clerk in sealing weights and measures.

SEC. 3. The clerks aforesaid shall, with the seal aforesaid, seal all weights and measures, presented to them for that purpose, that correspond with the county standard.

What shall constitute the "100 weight" and "ton."

SEC. 4. The hundred weight shall consist of one hundred pounds avoirdupois, and twenty such hundreds shall constitute a ton.

What weight shall constitute a bushel, &c.

Sec. 5. Whenever wheat, rye or Indian corn shall be sold by the bushel, and no special agreement as to the measurement or weight thereof shall be made by the parties, the bushel shall consist of sixty pounds of wheat, and fifty-six pounds of rye, and fifty-six pounds of Indian corn, and fifty pounds of buckwheat, and forty-eight pounds of barley, and oats thirty-five pounds, and beans sixty pounds, and cloverseed sixty pounds, and potatoes sixty pounds, and flaxseed fifty-six pounds, onions fifty-seven pounds, salt fifty pounds, castor beans forty-six pounds, hemp seed forty-four pounds, timothy seed forty-five pounds, ox bran twenty pounds, dried peaches thirty-three pounds, dried apples twenty-four pounds, stone coal seventy pounds.

This act to take effect and be in force from and after its passage.

CHAPTER 164.

WILLS.

An act to regulate wills.

§ 1. Who may make a will.
2. Who may make a will of personal estate.
3. Wills to be in writing; how signed by testator, and how attested.
4. How witnessed when not signed by the testator.
5. Revocation of wills; what will be, and how affected.
6. Revocation of wills by the marriage of testator and his leaving issue.
7. Will of an unmarried woman revoked by her subsequent marriage.
8. A bond to convey property previously devised by will, and described therein, not to effect a revocation of the devise; and what effect it shall have.
9. A charge or incumbrance not deemed a revocation, when.
10. A testator shall be deemed to have died intestate as to children not named in the will.
11. Advancement to children in life-time of testator, effect thereof.
12. Descendants of a devisee to take the property of the testator in same way as if devisee had survived the testator.
13. Revocation, &c., of second will, not to revive the first, unless, &c.
§ 14. In what counties wills to be proved.
15. Certificate of probate or rejection, by whom granted.
16. Attestation of a witness, sick, absent or non-resident, &c.; how procured.
17. Effect of such attestation.
18. When a witness is dead, insane, or residence unknown, what proof shall be sufficient.
19. When all witnesses are dead, insane, or their residence unknown, what proof shall be sufficient.
20. All testimony to be reduced to writing, signed and certified.
21. Nuncupative wills, what shall be considered good; how proved, and to be made at the time of last sickness, where, &c.
22. Wills of mariners and soldiers, how made, and when to be deemed good.
23. Proof of nuncupative will, when refused, and when and how to be offered.
24. Probate of nuncupative will not to be granted, except under certain conditions and proceedings.
25. Wills, by whom to be recorded.
26. Wills, when may be read as evidence.
27. Records of wills, when may be received as evidence, and when repelled by contrary proof.

§ 28. Lands devised by will, to be recorded; where and when, and in what county.

29. Proceedings by a person interested to contest the validity of a will, how had.

30. Verdict of the jury, or judgment of the court, how final.

31. Wills not contested within five years, to be binding, except upon persons absent from the United States, &c.

32. What weight the oath of a subscribing absent witness shall have at the trial.

33. Any person owning real or personal estate in this territory, may devise the real estate according to the laws of this territory, and the personal property according to the laws of the state or territory where he may reside.

34. Authenticated copies of wills, and the probate thereof; how recorded.

35. Such wills may be contested, &c., in same way as if made in this territory.

36. Legacies, bequests, &c., to witnesses of a will, how far to be considered void, and the witnesses to be admitted as competent.

37. When a will is not established, witness, who is devisee, can take, and how; can recover from the devisees, &c., named in the will.

38. When will can be attested by a sufficient number of other competent witnesses, devise, &c., shall be valid.

39. Creditor to be admitted as a witness to a will, notwithstanding the estate be charged with debt by will.

§ 40. Legatees, &c., may be competent witnesses in case of their having discharged or refused to receive any bequest, gift or otherwise.

41. The credit of such witnesses to be left to the court or jury.

42. In case of death of legatee, before probate, &c.; and on tender made, &c., he is a competent witness.

43. Witnesses examined to prove a will, not to take any legacy, bequest or compensation for same.

44. What devise shall operate as an estate for life, and remainder in fee simple.

45. What devise, and how made, &c., and omitting words of inheritance, &c., shall convey an estate in fee simple, and such shall be presumed the intention of the testator.

46. Other devisees and legatees to refund, when a bequest, &c., made to one shall be taken in execution for payment of the testator's debts.

47. The probate court required to order such contribution by the legatees, &c., and with same power and effect as in decrees of equity.

48. The term "will," shall be construed to include all codicils.

49. All courts shall pay due regard to the directions of wills, and the true intent, &c., of the testator.

50. The probate court, on being informed, has the power to summon and compel, by attachment, the production of any will, where a person has the same and refuses to produce it.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who may make a will.

SECTION 1. Every person of twenty-one years of age and upwards, of sound mind, may, by last will, devise all his estate, real, personal and mixed, and all interest therein, saving to the widow her dower.

Who may make a will of personalty.

SEC. 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of his goods and chattels.

Will to be in writing.

SEC. 3. Every will shall be in writing, signed by the testator, or by some person by his direction, in his presence; and shall be attested by two or more competent witnesses subscribing their names to the will, in the presence of the testator. (a)

Person signing testator's name, to subscribe his own as a witness.

SEC. 4. Every person who shall sign the testator's name to any will, by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

(a) *Vide* Withinton vs. Withinton, 7 Missouri Rep., 589, as to what witnesses must attest.

Will not revoked except by subsequent will, &c.

Sec. 5. No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, except by a subsequent will in writing, or by burning, cancelling, tearing, or obliterating the same, by the testator, or in his presence, and by his consent and direction.

Marriage of testator leaving issue, to revoke will unless, &c.

Sec. 6. If, after making a will, disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage, born to him after his death, such will shall be deemed revoked unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Will of *femme sole* revoked by marriage.

Sec. 7. A will executed by an unmarried woman shall be deemed revoked by her subsequent marriage.

Bond to convey property previously devised, not a revocation of devise.

Sec. 8. A bond, covenant, or agreement, made for a valuable consideration, by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant or agreement, for the specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

A charge or incumbrance when not deemed a revocation.

Sec. 9. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate previously executed, but the devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

A testator shall be deemed to have died intestate as to children not named in the will.

Sec. 10. If any person make his last will and die, leaving a child, or children, or descendants of such child or children, (in case of their death,) not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard any such child or children, or their descendants, not provided for, shall be deemed to die intestate; and such child, or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part. (*b*)

(*b*) Stokes vs. O'Fallon, 2 Missouri Rep., 32; Block and wife v. Block, et. al., 3 Missouri Rep., 594.

Advancement to children in life-time of testator, effect thereof.

SEC. 11. If such child, or children, or their descendants, shall have had an equal proportion of the testator's estate bestowed on them, in the testator's life-time, by way of advancement, they shall take nothing in virtue of the provisions of the preceding section.

Descendants of devisee shall take the property of testator.

SEC. 12. When any estate shall be devised to any child, grand child, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

Revocation, &c., of second will not to revive the first, except, &c.

SEC. 13. If, after making any will, the testator shall duly make and execute a second will, the destruction, cancelling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

In what counties wills to be proved.

SEC. 14. If the testator have a mansion house, or known place of abode, in any county, his will shall be there proved; if he have no place of residence, and lands be devised, it shall be proved in the county where any part of the lands lie; and if he have no place of residence, and there be no lands devised, the will shall be proved in the county in which the testator died; or if he died out of the territory, then in any county.

Certificate of probate, or rejection, by whom granted.

SEC. 15. When any will is exhibited to be proven, the court or clerk may immediately receive the proof, and grant a certificate of probate; or, if such will be rejected, grant a certificate of rejection.

Attestation of a witness, sick, absent or non-resident, &c., how procured.

SEC. 16. If any witness shall be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory, or more than sixty miles from the place where the will is to be proved, such court or clerk may issue a commission, annexed to such will, and directed to any judge or justice of the peace, or mayor, or other chief magistrate, empowering him to take and certify the attestation of such witness.

Effect of such attestation.

SEC. 17. If such witness appear before such officers, and make oath or affirmation that the testator signed the writing annexed to such commission, as his last will, or that some other person signed it by his direction, and in his presence; that he was of sound mind; (*d*) that the witness subscribed his name thereto; in the presence of the testator; the testimony so taken shall have the same force as if taken before the court or clerk.

(d) *Vide* Withinton vs. Withinton, 7 Missouri Rep., 589.

SEC. 18. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residences unknown, then such proof shall be taken of the handwriting of the testator, and of the witnesses dead, insane, or residences unknown, and of such other circumstances as would be sufficient to prove such will on a trial at common law. (*e*)

Witness dead, insane, or residence unknown, what proof shall be sufficient.

SEC. 19. If it shall appear to the satisfaction of the court, or clerk, that all the subscribing witnesses to the will are dead, insane, or their residences unknown, the court or clerk shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances, as would be sufficient to prove such will in a trial at law. (*e*)

When all the witnesses are dead, &c., what proof shall be sufficient.

SEC. 20. All the testimony adduced in support of any will shall be reduced to writing, signed by the witnesses, and certified by the clerk.

Testimony shall be written, signed and certified.

SEC. 21. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars; nor unless the same be proved by two witnesses, who were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling-house of the deceased, or where he had been residing for the space of ten days, or more, except where such person was taken sick from home and died before his return. (*e*)

Nuncupative wills good; how made and proved.

SEC. 22. Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by the common law, or by reducing the same to writing.

Wills of mariners and soldiers.

SEC. 23. No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

No proof of a nuncupative will to be received, unless, &c.

SEC. 24. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be, at any time, proved, unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the probate of such will, if they think proper.

No probate of nuncupative wills shall be granted, unless, &c.

(*e*) *Vide* 1 Phillips on Evidence, from 494 to 503, both inclusive, and the learned notes of Cowen and Hill, appended thereto.

All wills shall be recorded.

Sec. 25. All wills shall be recorded in the office of the county recorder, in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed in his office.

Wills proved may be read in evidence.

Sec. 26. Every will proved according to the provisions of this act, recorded and certified by the clerk of the probate court, and attested by his seal of office, may be read as evidence, without any further proof thereof.

Records of wills proved, &c., shall be evidence, &c.

Sec. 27. The record of any will, made, proved and recorded as aforesaid, and the exemplification of such record by the clerk of the probate court in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proved, and may in like manner be repelled by contrary proof.

Wills by which lands are devised shall be recorded, where.

Sec. 28. In all cases where lands devised by last will are situate in different counties, a copy of such will shall be recorded in the recorder's office, in each county, within six months after probate.

Who may contest the validity of a will.

Sec. 29. If any person, interested in the probate of any will, shall appear within five years after the probate or rejection thereof, and, by petition to the probate court of the county, contest the validity of the will, or pray to have a will proved which has been rejected, an issue shall be made up, whether the writing produced be the will of the testator or not, which shall be tried by a jury, or, if neither party require a jury, by the court. (*g*)

Effect of verdict of a jury and judgment of the court.

Sec. 30. The verdict of the jury, or the finding and judgment of the court, shall be final, saving to the court the right of granting a new trial, as in other cases, and to either party an appeal, in matters of law, to the supreme court. (*h*)

If no person appears within five years, probate to be binding.

Sec. 31. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period of five years after their respective disabilities are removed.

Oath of witness examined at probate, shall have weight, when.

Sec. 32. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of

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(*g*) A court of equity will not interfere to set aside a will on the ground of fraud in making it; the party is left to his remedy at law; Lyne vs. Guardian et al., 1 Missouri Rep., 410: Trotters vs. Winchester et al., ibid, 413; Swain vs. Gilbert et al., 3 Missouri Rep., 347; *vide* Dickey vs. Malechi, 6 Missouri Rep., 177. As to the mode of proceeding under the act of 1825, (Rev. C. of 1825, p. 792,) which is like the present act, *vide* Davis vs. Davis, 5 Missouri Rep., 183.

(*h*) This section precludes the supreme court from inquiring into the sufficiency of the evidence to sustain the verdict of the jury, but, as in other cases, if the court permit illegal testimony to go to the jury, the supreme court has power to correct such error; Dickey vs. Malechi, 6 Missouri Rep., 177.

such witness, examined at the time of probate, shall be admitted as evidence, and have such weight as the court or jury think it deserves.

Sec. 33. Any person owning real or personal estate in this territory may devise or bequeath such property by last will, executed and proved (if real estate be devised) according to the laws of this territory, or (if personal estate be bequeathed) according to the laws of this territory, or of the country, state or territory in which the will shall be made. (i)

Any person owning real or personal estate in this territory, may bequeath, &c.

Sec. 34. Authenticated copies of such wills, and the probate thereof, shall be recorded in the same manner as wills executed and proved in this territory, and shall be admitted in evidence in the same manner and with like effect. (ii)

Authenticated copies of such wills shall be recorded.

Sec. 35. Any such will may be contested and annulled, within the same time and in the same manner, as wills executed and proved in this territory.

Such wills may be contested.

Sec. 36. If any person has attested, or shall attest, the execution of any will, to whom any beneficial devise, legacy, estate, interest, gift or appointment of, or affecting, any real or personal estate, (other than and except charges in lands, tenements or hereditaments, for the payment of any debt or debts,) shall be thereby given or made, such devise, legacy, estate, gift or appointment, shall, so far only as concerns such person attesting the execution of such will, or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will. (j)

A beneficial devise to attesting witness, void: he shall be received as a witness.

Sec. 37. If such witness would be entitled to any share of the testator's estate in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will, and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of, the parts devised and bequeathed to them.

Witness entitled to share of testator's estate, may take by devise the extent of his share.

Sec. 38. If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this act, then such devise, legacy, estate, interest, gift or appointment, shall be valid.

When a devise to attesting witness shall be void.

Sec. 39. If by any will any real estate be charged with any debt, and any creditor, whose debt is so charged, has attested the

Creditor shall not be a witness.

(i) *Vide* section nineteen, article seven, of the act respecting executors and administrators.

(ii) Bright et al. vs, White, 8 Missouri Rep., 421.

(j) *Vide* Trotters vs. Winchester et al., 1 Missouri Rep., 413; Graham et al. vs. O'Fallon, 4 Missouri Rep, 338, and ibid, 601; *vide* also, Dickey vs. Malechi, 6 Missouri Rep., 177.

execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Legatees may be competent witnesses in case of, &c.

Sec. 40. If any person has attested or shall attest the execution of any will, to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest, upon tender thereof, such person shall be admitted as a witness to the execution of such will.

The credit left to court or jury.

Sec. 41. The credit of such witness shall be subject to the consideration of the court or jury.

Death, &c., of legatee, shall not affect his competency as a witness.

Sec. 42. If any legatee or devisee, who has attested or shall attest the execution of any will, shall have died, or die in the life-time of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, on tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

No person to whom any bequest has been made and has been examined as a witness, shall have any compensation.

Sec. 43. No person to whom any estate, interest, gift or appointment shall be given or made, which is hereby declared to be void, or who shall have refused to receive such legacy or bequest on tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive (except as provided in the thirty-seventh section) any profit or benefit of or from any such estate, interest, gift or appointment, so given or made to him by any such will or demand, receive or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

What devise shall be an estate for life and remainder in fee simple.

Sec. 44. If any person by last will, devise any real estate to any person for the term of such person's life, and after his or her death to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

When a devise shall be considered in fee simple.

Sec. 45. In all devises of lands or other estate, in this territory, in which the words "heirs or assigns," or "heirs and assigns forever," are omitted, and no expressions are contained in such will whereby it shall appear that such devise was intended to convey an estate for life only, and no further devise be made of the devised premises, to take effect after the death of the devisee to whom the same shall be given, it shall be understood to be the intention of the testator thereby to devise an absolute estate in the same, and shall convey an estate in fee simple to the devisee for all such devised premises.

Legatees and devisees shall refund, when.

SEC. 46. When any testator, in his last will, shall give any chattels or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Probate court shall order contribution, &c., as in equity.

SEC. 47. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the probate courts shall, upon petition of the party entitled to such contribution, and due notice given to the legatees, devisees, heirs, executors and administrators, order a contribution and distribution of such estate, according to equity, and enforce such orders with like effect as decrees of courts of equity. (*k*)

The term "will" construed.

SEC. 48. The term "will," as used in this act, shall be so construed as to include all codicils as well as wills.

Courts shall have due regard to the directions of the will, &c.

SEC. 49. All courts, and others concerned in the execution of last wills, shall have due regard to the directions of the will, and the true intent of the meaning of the testator in all matters brought before them. (*l*)

Probate court shall compel production of a will.

SEC. 50. If the probate court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate, such court shall have power to summon such person, and to compel him, by attachment, to produce the same.

This act to take effect and be in force from and after its passage.

CHAPTER 165.

WITNESSES.

An act concerning witnesses.

§ 1. Witnesses, how summoned to attend courts of record.
2. Summons to contain the names of all witnesses; where may be served.
3. Witness summoned and failing to attend, may be attached in any county.
4. Cause continued by absence of witness, court may order an attachment; how and when.
§ 5. Witness taken upon attachment may be discharged upon entering into recognizance.
6. Power of court to fine witness failing to attend.
7. Fees paid or tendered, witness liable to party for damages for failing to obey the summons.
8. Witness refusing to give evidence may

(*k*) *Vide* Levins, *et.al.*, vs. Stevens, *et al*, 7 Missouri Rep., 90.

(*l*) *Vide* Erwin vs. Henry, 5 Missouri Rep., 489.

be committed to jail, and detained until he give such evidence.
§ 9. How far a witness is privileged from arrest.
10. Suit against a witness to abate, if arrested while attending under a subpoena; penalty for arresting.
11. Subpoena, how directed; by whom to be served.
12. Subpoena how to be served; effect of the return.
13. Writ of *habeas corpus* may be issued to bring a witness up to testify who is confined in prison; when.
14. How the writ may be issued for witness confined in prison, to testify before justice of the peace.
§ 15. Affidavit to be filed; what to contain.
16. When the affidavit shall not be required.
17. Prisoner, after testifying, to be remanded to prison.
18. Witness not excused from answering on the ground that it may subject him to a civil suit.
19. Minister of the gospel not compelled to disclose confessions made to him in his professional character.
20. Physicians and surgeons not compelled to disclose confessions; when.
21. Witness not incompetent on account of religious opinions.
22. Negroes and mulattoes incompetent witnesses except in certain cases.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Witness how summoned to attend courts of record.

SECTION 1. In all cases where witnesses are required to attend the trial of any cause in any court of record, a summons shall be issued by the clerk of the court wherein the matter is pending, stating the day and place when and where the witnesses are to appear.

Summons to contain the names of all witnesses; may be served, where.

SEC. 2. Such summons shall contain the names of all witnesses for whom a summons is required by the same party, in the same cause, at the same time, who reside in the same county, and may be served in any county in this territory.

Witness summoned and failing to attend, may be attached.

SEC. 3. A person summoned as a witness in any cause pending in any court of record, and failing to attend, may be compelled, by writ of attachment against his body, to appear, which may be served in any county in this territory.

Causes continued by absence of witnesses, court may order an attachment; how and when.

SEC. 4. When a cause shall be continued on account of the absence of a witness, duly summoned, and the party for whom such witness shall have been summoned shall make affidavit stating that such absent witness is material, and that he cannot safely go to trial without his testimony, the court may award a writ of attachment, directed to the sheriff or other proper officer of the proper county, commanding him to take the body of such witness, that he appear and testify in the cause at the next term thereafter; and the clerk shall issue such writ accordingly, stating therein the day on which the cause is set for trial, as the day of his appearance.

Witnesses taken by attachment may be discharged by entering into recognizance.

SEC. 5. When a writ of attachment, authorized by the preceding section, shall be executed, the sheriff, or other officer, shall discharge such witness on his entering into a recognizance to the territory of Kansas with sufficient security, in the sum of one hundred dollars, (which the officer executing the writ is authorized to take,) conditioned for the appearance and due attendance of such witness, according to the exigency of the writ.

Power of court to fine witnesses failing to attend.

SEC. 6. The court shall have power to impose a fine, not exceeding fifty dollars, on every person summoned as a witness, who shall not appear and testify, which fine may be remitted for good cause shown, at the term for which he is summoned, or the next term thereafter.

Fees paid or tendered, witness liable to party for damages if he fail to obey the summons.

SEC. 7. When a party, causing a witness to be summoned, shall have paid or tendered to such witness his legal fees for travel, and one day's attendance, at the time of summoning, such witness, if he fail to attend, shall be liable to the action of the party for all damages sustained by the non-attendance, unless he show sufficient cause to justify such absence.

Witness refusing to give evidence, may be committed to jail.

SEC. 8. A person, summoned as a witness, and attending, who shall refuse to give evidence which may lawfully be required to be given by such person, on oath or affirmation, may be committed to prison by the court or other person authorized to take his deposition or testimony, there to remain, without bail, until he give such evidence.

How far a witness is privileged from arrest

SEC. 9. Witnesses shall be privileged from arrest, in all cases, except treason, felony, and breach of the peace, during their attendance on any court, or where their attendance is required by subpœna, and in going to and returning thence, allowing one day for every twenty miles from their abode.

Suit against a witness to abate, when.

SEC. 10. The suit of any person shall be abated who shall cause a witness to be arrested, knowing him to be attending as such upon a subpœna, and such person shall be fined at the discretion of the court from which the subpœna issued, in a sum not exceeding twenty dollars, upon ten days' previous notice thereof.

Penalty for arresting

Subpœna how directed; by whom served.

SEC. 11. Subpœnas for witnesses shall be directed to the person to be summoned to testify, and may be served by the sheriff, coroner, or any constable of the county in which the witnesses to be summoned reside or may be found, or by any free white person, above the age of twenty-one years, who would be a competent witness in the cause.

How to be served; effect of the return.

SEC. 12. The service of a subpœna, to testify, shall be by reading the same, or delivering a copy thereof to the person to be summoned; and if served by an officer, his return shall be conclusive of the facts therein stated; if served by a private person, the return shall be verified by affidavit, which shall be received as evidence.

Writ of *habeas corpus* to bring prisoner up to testify, may issue, when.

SEC. 13. Courts of record, and every judge or other officer authorized by law to grant writs of *habeas corpus*, shall have power, upon the application of any party to a suit or proceeding, civil or criminal, pending in any court of record or public body authorized to examine witnesses, to issue a writ of *habeas corpus* for the purpose of bringing before such court or public body any person who may be detained in jail or prison within this territory for any cause, except a sentence for felony, to be examined as a witness to such suit or proceeding, on behalf of the applicant.

How the writ may be issued for witnesses confined in prison to testify before justice of the peace.

Sec. 14. Such writ may also be issued by any such court or judge upon the application of a party to a suit or proceeding pending before a justice of the peace, or any officer authorized to examine witnesses, to bring any person confined in the jail of the same county, or the county next adjoining that where the suit or proceeding is to be heard or had before such justice or officer, to be examined as a witness.

Affidavit to be filed; what to contain.

Sec. 15. An application for such writ shall be verified by affidavit, and shall state the title and nature of the proceeding in which the testimony of the prisoner is desired, the court or officer before whom pending, and that the testimony of such prisoner is material and necessary to the applicant on the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes.

When the affidavit shall not be required.

Sec. 16. When such application shall be made by the attorney of the territory, or other prosecuting attorney, or other public prosecutor, it shall not be necessary to swear to the truth of the facts set forth in the application.

Prisoner, after testifying, to be remanded to prison.

Sec. 17. A prisoner who shall be brought before any court, public body or officer, upon a writ of *habeas corpus*, to testify, shall be remanded, after having testified, to the prison from which he was taken.

Witness not excused from answering on the ground that it might subject him to a civil suit.

Sec. 18. No competent witness in a cause shall be excused from answering a question relevant to the matter in issue, on the ground, merely, that the answer to such question may establish, or tend to establish, that such witness owes a debt, or is otherwise subject to a civil suit; but no such answer shall be used as evidence against such witness.

Minister not compelled to disclose confessions.

Sec. 19. No minister of the gospel, or priest of any denomination, shall be required or allowed to disclose any confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

Physicians and surgeons not compelled to disclose confessions, when.

Sec. 20. No person authorized to practice physic or surgery shall be required or allowed to disclose any information which he may have acquired from any patient, while attending him in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or do any act for him as a surgeon.

Witness not incompetent on ac-

Sec. 21. No person, on account of his opinions in relation to the Supreme Being, or a future state of rewards and punishments, shall be incompetent to testify as a witness.

count of religious opinions.

Sec. 22. No negro or mulatto, bond or free, shall be a competent witness, except in pleas of the territory against a negro or mulatto, bond or free, or in civil cases in which negroes or mulattoes alone are parties.

Negroes and mulattoes incompetent as witnesses, except, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 166.

WOODS, MARSHES AND PRAIRIES.

An act to prevent the firing of woods, marshes and prairies.

§ 1. Penalty for firing woods, marshes, &c., if it occasion damage, &c.
2. Penalty for wilfully setting fire to woods, &c., though no special damage happen.
3. Firing woods, &c., liable for damage to the party injured.
4. Masters liable for offences of slaves.
5. Person permitted to fire any thing on his own farm.
6. Construction of law.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Section 1. If any person shall wilfully set on fire any woods, marshes or prairies, so as thereby to occasion any damage to any other person, such person shall pay a sum not exceeding three hundred dollars, nor less than fifty dollars, which said fine shall be to the use of the county in which the offence is committed.

Penalty for firing woods, marshes or prairies, if it occasion damage.

Sec. 2. If any person shall wilfully set on fire any woods, marshes or prairies, such person shall be fined in any sum not exceeding one hundred dollars.

Penalty for wilful firing.

Sec. 3. If any person shall wilfully set on fire any woods, marshes or prairies, so as thereby to occasion any damage to any other person, such person shall make satisfaction for such damage to the party injured, to be recovered in an action on the case.

Firing woods, &c., liable for damages to the party injured.

Sec. 4. When any offence shall be committed against this act by a slave, with the consent or by the command of his master, such master shall be liable, in the same manner and to the same extent, as if the act had been committed by himself.

Masters liable for offences of slaves.

Sec. 5. This act shall not extend to any person setting on fire any thing on his own farm, as often as occasion may require, if done without intention to set on fire the adjacent woods, marshes or prairies, not occupied by such person.

Person permitted to fire anything on his own farm.

Construction of law.

SEC. 6. Nothing herein contained shall be so construed as to prevent any person from firing against fire, so as to protect his or her property from being destroyed.

This act to take effect and be in force from and after its passage.

CHAPTER 167.

WORDS.

An act to define the meaning of certain words.

§ 1. Definition of the words "county court." | § 2. Definition of the words "circuit court."

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Definition of the words "county court."

SECTION 1. Whenever the words "county court" occur in any of the laws passed or adopted by the legislative assembly of the territory of Kansas, at the present session thereof, they shall be construed to mean the board of commissioners transacting county business, or the probate court, according to the intent thereof.

Definition of the words "circuit court."

SEC. 2. Whenever the words "circuit court" occur in any of the laws passed or adopted by the legislative assembly of the territory of Kansas, at the present session thereof, they shall be construed to mean the district court.

This act to take effect and be in force from and after its passage.

CHAPTER 168.

WORDS.

An act defining the meaning of certain words.

§ 1. Meaning of the words "imprisonment" and "confinement."

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Meaning of the words imprisonment and confinement.

SECTION 1. That the words "imprisonment" and "confinement," whenever they occur in any law of this territory, indicating a punishment for any crime, shall be understood to mean the same thing, and shall be so construed in all judgments finding conviction or sentence of any court.

This act to take effect and be in force from and after its passage.

CHAPTER 169.

WRITS AND PROCESS.

An act regulating writs and process.

§ 1. Writs issued by the courts to run in the name of the "Territory of Kansas;" how tested.
2. Writs issued by judge or officer, to run in the name of the "Territory of Kansas;" how subscribed.
§ 3. Writs not to be served on Sunday, or 4th of July, except in certain cases.
4. Writ not served, alias may be issued; in case of death, proper writ may issue in vacation.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Writs issued by courts to run in the name of the "territory of Kansas;" how tested.

SECTION 1. All writs and process, issued out of any court of record, shall run in the name of the "Territory of Kansas," and shall be tested by the clerk of the court from which the same shall be issued, and sealed with the judicial seal of such court.

Writs issued by judge or officer to run in the name of the "territory of Kansas," &c.

SEC. 2. All writs and process, issued by any judge or justice of the peace, or other officer authorized to issue the same, shall run in the name of the "Territory of Kansas," and be subscribed by the officer issuing the same.

Writs not to be served on Sunday, or Fourth of July, except in certain cases.

SEC. 3. No person, on Sunday, or on the fourth day of July, shall serve or execute any writ, process, warrant, order, judgment, or decree, except in criminal cases, or for a breach of the peace, or when the defendant is about leaving the county, or the cases provided for by law; and the service of every such writ, process, warrant, order, judgment, or decree shall be void, and the person serving or executing the same shall be as liable to the suit of the party aggrieved as if he had done the same without any writ, process, warrant, order, judgment, or decree.

Writ not served, alias may be issued; in case of death, proper writ may issue in vacation.

SEC. 4. When any writ or process, issued out of any court of this territory, shall not be executed, the clerk of such court, on the application of the party suing out such writ or process, shall issue other like process; and if any party to any suit pending in the said court shall die, the clerk of such court may, in vacation, issue proper writs and process to bring in the representatives of such deceased party, on the application of the other party in such action.

This act to take effect and be in force from and after its passage.

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RESOLUTIONS, CONCURRENT.

Resolved, By the house of representatives of the territory of Kansas, the council concurring therein, that the secretary and assistant secretary of the council, and the chief clerk and assistant clerk of the house of representatives of said territory, be authorized and instructed to copy an index to the journals of their respective houses, and that Samuel A. Lowe be authorized and instructed to copy, make marginal notes, and index the laws of said territory, which may be passed by the present session of the legislative assembly.

Joint resolution relating to forms.

Resolved, By the council and house of represenatives of the territory of Kansas, that the Hon. R. R. Rees be and he is hereby authorized to prepare and publish a book of forms for the use of civil officers and others in this territory, and that he submit the same to the next legislative assembly for approval.

SPECIAL LAWS.

CHAPTER 1.

An act to authorize John G. McClelland and Clarkson M. Wallace to build a toll bridge.

§ 1. Permission to build a bridge.
2. To keep it in good repair, rates to be charged.
§ 3. When privileges of this act cease.
4. County commissioners may change rates of toll.
5. Period for which granted.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas as follows:

Permission to build a bridge.

SECTION 1. That John G. McClelland and Clarkson M. Wallace, of the county of Douglass and territory of Kansas, are hereby authorized to erect a toll bridge across the Wakarusa river, where the road leading from Fort Leavenworth to St. Bernard crosses the river.

To keep it in good repair.

Rates to be charged.

SEC. 2. That the said McClelland and Wallace shall erect a good and substantial bridge, and keep it in good repair, so as to render the crossing thereon safe and convenient, and may charge, demand and receive the following rates of tolls, until otherwise directed, to-wit: For each footman, five cents; for man and horse, ten cents; for each single horse, mule, jack or jennet, five cents; for each head of neat cattle, two cents; for each head of other stock, one cent; for each one-horse carriage or buggy, twenty-five cents; for each two-horse carriage or wagon, fifty cents; for each [illegible] horse or ox wagon, seventy-five cents.

When privileges of this act to cease.

SEC. 3. If said McClelland and Wallace shall suffer the said bridge to go to decay, so as to render crossing thereon unsafe, or shall suffer said bridge to remain out of repair for the space of six months at any time, the privileges herein granted shall cease and determine.

Rates may be changed.

SEC. 4. It shall be in the power of the county commissioners of Douglass county to change said rates of toll at any time they think proper.

Period for which granted.

SEC. 5. The privileges hereby granted shall continue for the term of fifteen years and no longer.

This act to take effect and be in force from and after its passage.

CHAPTER 2.

An act entitled an act to authorize James Findlay to establish a bridge across the Wakarusa river.

§ 1. Privilege to James Findlay to erect a bridge.
2. Bridge to have stone abutments.
3. No other bridge to be erected.
§ 4. Rates to be charged.
5. When person may sue; proviso.
6. Not to prevent Indians from building bridges.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Privilege to erect a bridge.

SECTION 1. That from and after the passage of this act the sole and exclusive privilege is hereby granted, for the period of twenty-five years, to James Findlay, his heirs or assigns, to build, construct and erect a bridge across the Wakarusa river or creek, at the crossing of the territorial road leading from the Missouri line to Lawrence and Tecumseh; *provided*, that the said bridge shall be completed within three years.

Bridge to have stone abutments.

SEC. 2. That the said bridge shall have rock or stone abutments, and a pillar of the same material, not less than eight feet in height in the middle of the bridge, or as near thereto as necessary.

No other bridge to be erected.

SEC. 3. That it shall not be lawful for any person or persons whatsoever to build, erect or construct a bridge or ferry on or over the Wakarusa river or creek within four miles of the said crossing of the same Wakarusa.

Rates to be charged.

SEC. 4. The said James Findlay, his heirs and assigns, shall, and he or they are hereby authorized, directed and empowered, to demand and receive the following rates of charges or toll for crossing said bridge, until otherwise changed by law, to wit: For every wagon, fifteen cents, and five cents for each and every horse, mule, ass, jennet or ox attached to and used in said wagon; for each and every pleasure carriage, fifteen cents, and five cents for each and every horse or mule attached thereto; for each and every loose or drove ox, cow, bull, calf, horse, mule, jennet or ass, three cents; for each and every loose or drove hog, sheep or goat, one cent; for each and every person, three cents; for each and every single person and horse, five cents, and no more.

SEC. 5. And if the said James Findlay, his heirs and assigns, shall charge or receive more than the rates hereto affixed, the person or persons so charged or so paying the excess are hereby authorized and empowered to sue the said James Findlay, his heirs or assigns, in debt, for the recovery of the sum of ten dollars, in his, her, or their own right, and costs of suit, before the nearest justice of the peace; *provided*, that this act shall not be so construed as to interfere with any laws or regulations of the Shawnee Indians, or with the rights of any person who may have erected, or commenced the erection, of any bridge, or the construction of any ferry.

When person to sue.

Proviso.

SEC. 6. Nothing in this act contained shall be so construed as to prevent any Indian, who may own lands in fee simple on said stream, from erecting a bridge on their own lands, within the chartered limits, as provided in this act.

Not to prevent Indians from erecting a bridge.

This act to take effect and be in force from and after its passage.

CHAPTER 3.

An act granting to Lewis Twombly exclusive right to a bridge across the Vermillion branch of the Big Blue river, at the crossing of the Independence and California road.

§ 1. Exclusive right to certain privileges granted to Lewis Twombly; proviso.

Whereas Lewis Twombly has, at his own expense, and at a cost of about one thousand dollars, erected a good and sufficient bridge across the Vermillion branch of the Big Blue river, at the crossing of the Independence and California road; therefore,

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That the said Lewis Twombly shall have the exclusive right of enjoying the benefits and profits of collecting toll for the crossing of said bridge, and all other bridges that may hereafter be erected over said stream for the distance of one mile up and down the said Vermillion branch of the Big Blue river, for the period of five years; *provided*, that the said Lewis Twombly shall conform to tariff of tolls that may be fixed by the tribunal that has charge of the county business in which said bridge or bridges may be situated.

Exclusive right granted to Lewis Twombly, to certain privileges.

Proviso.

This act to take effect and be in force from and after its passage.

CHAPTER 4.

An act to prevent obstructions across Big Sugar creek.

§ 1. Obstructions over Big Sugar creek; penalty; proviso.
§ 2. Superintendent to be appointed; duty of superintendent.
3. Fines to be paid into the treasury.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Obstructions over Big Sugar creek.

Penalty.

Proviso.

SECTION 1. That any person or persons who shall build a bridge or bridges, mill-dam or mill-dams, or other obstructions, over Big Sugar creek, in Linn county, in Kansas territory, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before the district court for the district wherein the said offence shall have been committed, shall be fined not exceeding one thousand dollars, or imprisoned not more than twelve months, at the discretion of the said court; and the said bridge or bridges, mill-dam or mill-dams, or other obstructions, shall be removed at the cost and charge of the offender or offenders; *provided,* that nothing herein contained shall be construed to prevent the building of bridges across said stream so as not to obstruct its free passage.

Superintendent to be appointed.

Duty of superintendent.

SEC. 2. That the county commissioners of the county or counties through which said stream passes, are hereby authorized to appoint, and they shall appoint, a superintendent, whose duty it shall be to remove, or have removed, all obstructions whatsoever which may from time to time be or collect in or across the said stream by means of any cause whatsoever; and the said superintendent shall be allowed a reasonable compensation for any such removal or removals, by the said county commissioners, to be paid out of the county treasury.

Fines to be paid into treasury.

SEC. 3. All fines that may occur by the provisions of this act shall be paid into the treasury, for county purposes.

This act to take effect and be in force from and after its passage.

CHAPTER 5.

An act to establish a ferry at Whitehead, on the Missouri river.

§ 1. Who shall keep ferry, &c.	§ 2. Boat, &c.
	3. Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That James R. Whitehead, his heirs and assigns, are hereby authorized to keep a ferry at what is known as Whitehead's ferry, at the town of Whitehead, on the Missouri river, in the territory of Kansas; and shall have the exclusive privilege of keeping the same at said point, and within one mile up and down the river from the same, for and during the period of twenty years. Who shall keep ferry.

SEC. 2. The said James R. Whitehead shall keep ready for use sufficient boat or boats to do all the crossing at said ferry, and shall give bond and be subject to all the laws regulating ferries now in force, or which may hereafter be made, in said territory. Boats, &c.

SEC. 3. A non-compliance with any of the provisions of this act shall work a forfeiture of all rights under it. Forfeiture of charter.

SEC. 4. This act to be in force from and after its passage.

CHAPTER 6.

An act to incorporate a ferry at the town of Lawrence, in the territory of Kansas.

§ 1. Who shall keep ferry.	§ 5. Condition of ferry, &c.
2. Accommodations, &c.	6. Forfeiture of charter, &c.
3. County tribunal shall fix rates.	7. Exclusive rights in certain ferry.
4. Bond to be executed.	

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That John Baldwin and his legal heirs are hereby authorized to keep a public ferry across the Kansas river, opposite the town of Lawrence, Kansas territory, for the term of fifteen years from and after the passage of this act, and have a landing on the north side of said river, upon the land of the Delaware reserve. Who shall keep ferry, &c.

Accommodations, &c.

SEC. 2. It shall be the duty of the said Baldwin, or his legal heirs, to keep sufficient accommodations for crossing the said river at all times.

County tribunal shall fix rates, &c.

SEC. 3. The tribunal transacting county business for the county, including the town of Lawrence when organized, shall, from year to year, or whensoever they shall see proper, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted at the landing; and any charge made or extorted by said before-named Baldwin or his legal heirs, more than the rates fixed by said tribunal, shall create a forfeiture of all their privileges under this act: *Provided*, the rate of ferriage fixed by the said tribunal shall be reasonable and in proportion to the rates at other places on said river.

Bond to be executed, &c.

SEC. 4. The said John Baldwin shall execute a sufficient bond, to be approved by the tribunal transacting county business, before starting said ferry under this act, and shall renew the same whenever said bond shall become insufficient, conditioned that they will comply with all the conditions and provisions of this act; the said bond shall be filed in the office of the said tribunal transacting county business, and may be sued on by any person aggrieved, injured or unnecessarily detained by said ferry, and a copy of the same, under the seal of the tribunal transacting county business, properly attested, shall be sufficient evidence of said bond on the trial had for damages.

Condition, &c.

SEC. 5. The said Baldwin shall be required to keep the said ferry and its appurtenances in good repair and condition.

Forfeiture of charter.

SEC. 6. A non-compliance with any provision of this act shall work a forfeiture of this charter.

Exclusive right within certain limits.

SEC. 7. This act shall and does confer upon the said Baldwin the exclusive right to establish a ferry within two miles of said town of Lawrence, in the territory of Kansas, on the south side of the Kansas river aforesaid.

This act to take effect and be in force from and after its passage.

CHAPTER 7.

An act to incorporate a ferry in the territory of Kansas, opposite the town of Iatan, in Missouri.

§ 1. Who shall keep ferry.	§ 4. Good repair.
2. County tribunal shall fix rates.	5. Forfeiture of charter.
3. Bond to be executed.	6. Limits, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Nimrod Farley, his heirs or assigns, are hereby authorized to keep a public ferry across the Missouri river, opposite the town of Iatan, in the State of Missouri, for the term of ten years from and after the passage of this act; and have a landing on the south side of said river, upon the lands occupied and claimed wholly or in part by said Farley, he consenting thereto upon condition that a good substantial boat or boats, adapted to the wants of the public at that place, be kept in operation. Who shall keep ferry, &c. Conditions, &c.

SEC. 2. The tribunal transacting county business, in which said ferry is situated, shall, from year to year, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted up at the landing; *provided*, the rate of ferriage fixed by said tribunal shall be reasonable and in proportion to the rates at other places on said river. County tribunal shall fix rates.

SEC. 3. The said Nimrod Farley shall execute a sufficient bond, to be approved by the tribunal transacting county business, conditioned that he will comply with all the conditions and provisions of this act; the said bond shall be filed in the recorder's office of the county including said ferry, and be sued on by any person aggrieved, injured or unnecessarily detained by said ferry; and a copy of the same, under the seal of said tribunal, properly attested, shall be sufficient evidence of said bond on the trial had for damages. Bond to be executed.

SEC. 4. The said Farley, or his assigns, shall be required to keep the said ferry and its appurtenances in good repair and condition. Good repair.

SEC. 5. A non-compliance with any of the provisions shall work a forfeiture of this charter. Forfeiture of charter.

SEC. 6. This shall and does confer upon the said Farley, or his assigns, the exclusive right to establish a ferry within one mile of a point directly opposite the town of Iatan aforesaid, on the south side of said river, in the territory of Kansas. Limits, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 8.

An act to authorize Thomas N. Stinson to establish a ferry across the Kansas river, at the town of Tecumseh.

§ 1. Who shall keep ferry.
2. Good boat to be kept.
3. Bond to be executed.
§ 4. County tribunal to fix rates, &c.
5. Duty of keeper.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who shall keep ferry.

Where, &c.

SECTION 1. That Thomas N. Stinson, his heirs, executors, administrators or assigns, shall have the exclusive right and privilege, for the period of twenty years from and after the passage of this act, of keeping and maintaining a ferry across the Kansas river, in the territory of Kansas, at the town of Tecumseh, and no other ferry shall be established at any place within half a mile above or below the mouth of Shunga Munga creek.

Good boat to be kept.

SEC. 2. That said Thomas N. Stinson shall at all times keep a good and substantial boat or boats, in good repair, sufficient for the accommodation of all persons wishing to cross said ferry, and hands sufficient in number and of skill to properly manage said boat or boats, and said Stinson and ferrymen in his employ shall comply with all the regulations of this act.

Bond to be executed.

Responsible for injury, &c.

SEC. 3. The tribunal having jurisdiction of county business in the county in which the town of Tecumseh is situated shall require the said T. N. Stinson to execute his bond, in such sum as the said tribunal may direct, with good and sufficient security, to be approved by said tribunal, for the faithful performance of his duty under this act; and any person who shall sustain any injury by the negligence or default of said Stinson, or of the ferrymen in his employ, may have a remedy by an action upon the bond required in this act.

County tribunal to fix rates of ferry.

SEC. 4. The said tribunal shall, from year to year, fix the rate of ferriage to be charged at said ferry, and the said Stinson shall keep a list of the rates to be charged at said ferry posted up at public places on said boat or boats, or ferry house or houses, at all times, and upon failure to do so he shall forfeit his right to collect ferriage.

Duty of keeper.

SEC. 5. It shall be the duty of said Stinson, or his assigns, at all times, except at night, and the running of ice so thick and in such quantities as to make the crossing unsafe and dangerous to the boat, to transport over said river persons on foot, persons on horseback, wagons and teams, the United States mail, and stock of every kind and description whatsoever; and a failure to do so, without a reasonable cause, shall be deemed a violation of this act; also, that if the said county tribunal shall neglect at any future year to fix the said rates of charges for said ferry, the rates last fixed shall be in full force until changed by said tribunal.

This act to take effect and be in force from and after its passage.

CHAPTER 9.

An act to grant to F. J. Marshall and Albert G. Woodward exclusive privilege to establish a ferry across the Big Blue river, at the crossing of the great military road leading from Fort Leavenworth to Forts Kearney and Laramie, and also at the crossing of the Independence and California road across the same river.

§ 1. Who shall keep ferry, where, &c.
2. Good boat shall be kept.
§ 3. County tribunal shall fix rates.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That F. J. Marshall and Albert G. Woodward, trading under the firm and style of Marshall and Woodward, and their heirs and assigns, shall be entitled to keep a ferry at the crossing of the great military road leading from Fort Leavenworth to Forts Kearney and Laramie, across Big Blue river; also to keep a ferry at the crossing of the Independence and California road across said Big Blue river, to the exclusion of any and all other persons from the south line of the Oto Indian reservation to a point one mile below the crossing of said Independence road.

Who shall keep ferry, &c

Where, &c.

SEC. 2. *And be it further enacted*, that the said Marshall and Woodward shall keep a good and sufficient boat or boats at the aforesaid crossings, sufficient to cross in a reasonable time the travelling public, and a failure to do so shall forfeit their charter and the privilege herein granted.

Good boat to be kept.

Forfeiture of charter.

SEC. 3. *And be it further enacted*, that the court or tribunal transacting county business for the county or counties in which said ferries are located, shall fix the rate of ferriage to be charged at said ferries.

County tribunal shall fix the rate of ferriage.

This act to take effect and be in force from and after its passage.

CHAPTER 10.

An act to establish a ferry at the town of Douglass.

§ 1. Persons authorized to keep ferry.
2. To execute a bond.
3. Tribunal to fix the rates of ferriage.
4. Boats to be kept.
§ 5. What deemed a violation of this act.
6. Tribunal may establish other ferries, when.
7. Exclusive right granted.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Persons authorized to keep a ferry.

Section 1. That Paris Ellison, Chas. E. Kearney, E. C. McCarty, M. W. McGee, G. W. Clark, and John W. Reid, their heirs and assigns, are hereby authorized to keep a public ferry across the Kansas river, at the town of Douglass, for the term of twenty years from and after the first day of October next, and shall have the privilege and right to keep said ferry within the limits of said town of Douglass, upon condition that they keep a good and sufficient ferry-boat or boats adapted to the wants of the travelling public at that place.

To execute a bond.

Sec. 2. That the tribunal having county jurisdiction shall require Paris Ellison and other named persons in the foregoing section, or their lessees and assigns, to execute his or their bonds, in such sum as said tribunal may direct, for the faithful performance of his or their duties, with good and sufficient security, to be approved by said tribunal.

Tribunal to fix the rates of ferriage.

Sec. 3. Said tribunal for the transaction of county business shall, from year to year, fix the rate of ferriage to be charged at said ferry.

Boats to be kept.

Sec. 4. Should said boat or boats get out of repair, they shall be replaced by others without unnecessary delay.

What deemed a violation of this act.

Sec. 5. Should said Paris Ellison and others named in this act, or their lessees or assigns, refuse to transport persons on foot or horseback, wagons or carriages of any kind, or any description of stock, they shall be deemed to have violated this act.

Tribunal may establish other ferries, when

Sec. 6. Should said tribunal for the transaction of county business be satisfied that said Paris Ellison, and others named in this act, fail to keep a good and sufficient boat or boats to accommodate the travelling public, the said tribunal shall have power to establish other ferries.

Exclusive right granted.

Sec. 7. That Paris Ellison and his associates named in this act, or his or their assigns, shall have the exclusive right to establish and keep a ferry at said town of Douglass, and for one mile up the Kansas river from said town, and down said river to the eastern line of said town of Douglass.

This act to take effect and be in force from and after its passage.

CHAPTER 11.

An act to establish a ferry.

§ 1. Ferry across the Missouri river.
2. Safe boats to be kept.
3. Rates of ferriage.
§ 4. Shall execute a bond.
5. Persons injured may sue, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That William Thompson, his heirs and assigns, shall have the right and privilege, for the period of fifteen years from and after the passage of this act, of keeping a public ferry across the Missouri river, at the bend above Kickapoo city, on said river, to have a landing upon the land claimed by said William Thompson. Ferry across Missouri river.

SEC. 2. The said William Thompson shall at all times keep a safe boat or boats, for the accommodation of all persons wishing to cross at said ferry, without unnecessary delay. Safe boats to be kept.

SEC. 3. The rates of charge for crossing at said ferry shall not exceed those of other ferries on the same river, and shall be regulated by the board transacting county business in and for the county in which said ferry is situated. Rates of ferriage.

SEC. 4. The said William Thompson, his heirs or assigns, shall, within three months after the organization of the county tribunal, according to law, in the county in which said ferry may be situated, file, or cause to be filed, with the clerk of said court, a bond, with two or more good and substantial securities, to be approved by said court, in the penal sum of one thousand dollars, on condition that he or they will fulfil all the duties enjoined on him or them in the foregoing sections; and in case of their failure or neglect so to do, they shall forfeit all the benefits which might have accrued to them from the passage of this act. Shall file a bond.

SEC. 5. Any person who shall sustain any injury by the willful negligence of said Thompson, his heirs or assigns, may have a remedy by an action upon the bond required by this act. Person injured may sue, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 12.

An act to charter a ferry across the Missouri river, at the town of Palermo.

§ 1. Who is authorized to keep ferry.
2. Required to keep a good ferry.
§ 3. County tribunal to regulate ferriage.
4. Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who is authorized to keep ferry.

SECTION 1. That Loren S. Meeker, Richard Hubble, and John W. Mockebee, are hereby authorized to keep a ferry across the Missouri river, at the town of Palermo, in the territory of Kansas, for the term of fifteen years.

Required to keep a good ferry.

SEC. 2. That the said parties named in the first section of this act shall keep a good and sufficient boat or boats, at all times, sufficient to cross the travelling public, and shall cause the same to be well manned by good and safe hands.

County tribunal to regulate ferriage.

SEC. 3. The said parties shall be allowed such fees as may be determined and fixed by the tribunal transacting county business for the county of Doniphan.

Forfeiture of charter.

SEC. 4. If the parties named in the first section of this act shall violate any of the provisions of this act, they shall forfeit all the privileges granted hereby.

This act to take effect and be in force from and after its passage.

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CHAPTER 13.

An act to establish a ferry across the Kansas river, opposite the town of Lecompton.

§ 1. Who are authorized to keep a ferry. | § 2. County tribunal to regulate ferriage.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who is authorized keep a ferry.

SECTION 1. That William K. Simmons, Wesley Garrett and Evan Todhunter are hereby authorized to keep a ferry across the Kansas river, opposite the town of Lecompton, in the territory of Kansas, and shall have the exclusive right and privilege of keeping a ferry, within a distance of one mile from the landing up and down the said river, for the period of five years; *provided*, that no right or privilege hereby granted shall in any way affect the rights and privileges heretofore granted to the Lecompton Bridge Company, or prevent the contractors who may undertake the building of said bridge from owning and using any flatboat or boats for any purposes connected with the construction of said bridge.

County tribunal to regulate ferriage.

SEC. 2. That the tribunal for transacting county business in and for the county in which the said ferry shall be situated is hereby authorized and required to regulate the ferriage across said river, from time to time, as the same may be deemed proper.

This act to take effect and be in force from and after its passage.

CHAPTER 14.

An act to incorporate a ferry at the town of Palermo, in the territory of Kansas.

§ 1. Who authorized to keep a ferry.
2. County tribunal to fix rate.
3. Bond to be given.
§ 4. Ferry to be kept in good repair.
5. Charter forfeited.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Authority to keep a ferry.

SECTION 1. John Stearwalt, his heirs or assigns, are hereby authorized to keep a public ferry across the Missouri river opposite the town of Palermo, in the territory of Kansas, for the term of twenty years from and after the passage of this act, and have a landing on the south side of said river, upon condition that a good substantial boat or boats, adapted to the wants of the public at that place, shall be kept by him, his heirs or assigns; the said boat or boats to be properly manned and attended, and kept in good repair.

Condition.

County tribunal to fix rates.

SEC. 2. The tribunal transacting county business for the county, including Palermo, shall, from year to year, or whensoever they shall see proper, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted at the landing; and any charge so made or extorted by the before-named Stearwalt, his heirs or assigns, more than the rates fixed by said tribunal, shall be and create a forfeiture of all his or their privileges under this act.

Owner to execute bond.

SEC. 3. The said Stearwalt, his heirs or assigns, shall execute sufficient bonds, to be approved by the tribunal transacting county business, before starting said ferry under this act, and shall renew the same whenever required to do so by said tribunal, there-

Condition of.

after conditioned that he or they will comply with all the conditions and provisions of this act; the said bond shall be filed in the recorder's office of the county including said ferry, and be sued on by any person aggrieved, injured or unnecessarily detained by said ferry, and a copy of the same, under the official seal of the recorder, properly attested, shall be sufficient evidence of said bond on the trial had for damages.

Ferry to be kept in good repair.

SEC. 4. The said Stearwalt, or his assigns, shall be required to keep said ferry and its appurtenances in good repair and condition.

Forfeiture of charter.

SEC. 5. A non-compliance with any of the provisions of this act shall work a forfeiture of this charter.

This act to take effect and be in force from and after its passage.

CHAPTER 15.

An act to establish a public ferry at the town of Iowa Point, in the territory of Kansas.

§ 1. Who shall keep ferry.
2. Good boat to be kept.
3. County tribunal.
4. Bond to be executed.

§ 5. Allowed to proceed before county tribunal is organized.
6. Shall keep ferry in good repair.
7. Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who shall keep ferry.

SECTION 1. That John S. Pemberton and Harvey W. Foreman, their heirs and assigns, are hereby authorized to keep a public ferry at the town of Iowa Point, in the territory of Kansas, for the term of fifteen years from and after the passage of this act, and have a landing on the west side of ——— upon the land reserved and secured to the Board of Foreign Missions of the Presbyterian church by treaty with the Iowa Indians, which said reservation has been purchased by the said John S. Pemberton and Harvey W. Foreman, and on which they have laid off the said town of Iowa Point.

Good boat to be kept.

SEC. 2. The said above-named persons agree that a good and substantial boat or boats, adapted to the wants of the public at said ferry, shall be kept by them, the said boat or boats to be properly manned and attended, and to be kept in good repair; said boat or boats to be propelled by steam or by horse power; *provided*, that said above-named persons shall be allowed twelve months to procure a suitable steamboat for said ferry; and *provided, further*, that they shall in the meantime have and keep on hand, at all times, sufficient and safe flatboats, towboats and skiffs to accommodate properly and subserve the interests of the public at said ferry.

County tribunal to fix rates of ferry.

SEC. 3. The tribunal transacting county business for the county, including the town of Iowa Point, when organized, shall, from year to year, whenever they think proper, fix the rate of ferriage to be charged at said ferry; a list of the same shall be posted at the ferry landing, and any charge made or extorted by the said before-named persons, or their agents or employees, more than the rates fixed by said tribunal, shall be and create a forfeiture of all their privileges under this act.

Limits of ferry.

SEC. 4. The said persons before named shall have the exclusive right of establishing and keeping a ferry at and within the limits of said town of Iowa Point, and within one mile of the same, up and down said river, on the Kansas side thereof, for the period aforesaid; but the said persons, or their assigns, shall execute sufficient bonds, to be approved by the tribunal aforesaid, and shall renew the same whenever required by said tribunal or other competent authority, conditioned that they will comply with all the conditions and provisions of this act. The said bond shall be filed in the office of said tribunal transacting county business, and may be sued on by any person aggrieved, injured or unnecessarily detained by said ferry; and a copy of the same, under the seal of said tribunal transacting county business, properly attested, shall be sufficient evidence of the contents of said bond, on the trial had for damages.

Bond to be executed.

Bond shall be filed.

Allowed to proceed under this act

SEC. 5. Until said tribunal for the transaction of county business shall be organized, said persons shall be allowed to proceed under this act by filing said bond with the secretary of the territory.

Shall keep ferry in good order.

SEC. 6. The said persons so chartered, and their assigns, shall keep said ferry and its appurtenances in good order and repair, but shall be allowed a reasonable time to repair, or, in case of the loss of a boat, to procure another.

Forfeiture of charter.

SEC. 7. A non-compliance with the provisions of this act shall work a forfeiture of this charter.

This act to take effect and be in force from and after its passage.

CHAPTER 16.

An act to establish a ferry across the Missouri river, opposite the town of Boston.

§ 1. Shall keep ferry.
2. County tribunal to fix rates.
3. Boats to be kept in good repair.
4. Duty of keeper.
5. County tribunal can establish other ferries.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who shall keep ferry.

SECTION 1. That Peter S. Roberts, his heirs or assigns, are hereby authorized to keep a public ferry across the Missouri river, at a point on the west bank of said river, opposite the town of Boston, Missouri, for the term of fifteen years, and shall have the exclusive right of ferry privilege for two miles up and two miles down said river from said point: *Provided*, that he or they will, at all times, keep a good and substantial boat or boats adapted to the wants of the public at that place, and shall be attended by hands in sufficient force and skill to enable him or them properly to manage the boat or boats, and he or they shall comply with all the other regulations of this act.

County tribunal to fix rates of ferry.

SEC. 2. The court transacting county business shall, from year to year, fix the rate of ferriage to be charged at said ferry, and the said Peter S. Roberts shall keep a list of the rates to be charged at said ferry posted up at some public place on said boat or boats, or ferry-house or houses, at all times.

Boats shall be repaired without delay.

SEC. 3. If said boat or boats shall get out of repair or be prevented from being used, it or they shall be repaired or replaced by other boat or boats without unnecessary delay.

Duty of keeper.

SEC. 4. It shall be the duty of said Peter S. Roberts, his heirs or assigns, at all times, (except at night, and the running of ice so thick and in such quantity, or the blowing of the wind so high, as to make the crossing unsafe and dangerous to the boat,) to transport over said river persons on foot, persons on horseback, wagons and teams, the United States mail, and stock of every kind and description whatsoever; and a failure to do so, without reasonable excuse, shall be deemed a violation of this act.

County tribunal can establish other ferries.

SEC. 5. If the court transacting county business, in which said ferry is located, shall be satisfied at any time that said Roberts, his heirs or assigns, have failed to comply with the provisions of this act, the said court shall have power to establish other ferries.

This act to take effect and be in force from and after its passage.

CHAPTER 17.

An act to establish a ferry at the town of Atchison, in the territory of Kansas.

§ 1. Authority granted to keep a ferry across the Missouri river, at Atchison.
2. Boats propelled by steam to be kept for said ferry.
3. Tribunal to fix rates of ferriage; and same to be posted at the landing.
4. Sufficient bond to be given; to be approved by tribunal transacting business.
§ 5. Authority given after filing bond with secretary of the territory.
6. Ferry to be kept in good order, but reasonable time allowed to repair damages.
7. Non-compliance with the provisions of this act to work forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Authority granted to keep a public ferry accross the Missouri river, at the town of Atchinson, in said territory.

SECTION 1. That George M. Million, Lewis Burnes, Daniel D. Burnes, James N. Burnes, and Calvin F. Burns, their heirs and assigns, are hereby authorized to keep a public ferry across the Missouri river, at the town of Atchison, in said territory, for the term of twenty years from and after the passage of this act, and have a landing on the west side of said river, upon the land owned by the United States, and claimed in whole or in part by the Atchison Town Company, or others.

Boats propelled by steam to be kept for said ferry.

SEC. 2. That said above named persons consent and agree that a good substantial boat or boats, adapted to the wants of the public at the town of Atchison aforesaid, shall be kept by them or their assigns; the said boat or boats to be properly manned and attended, and propelled by steam, and kept in good repair.

Tribunal transacting business to fix the rates of ferriage; the same to be posted at the landing; extortion to create a forfeiture of all privileges.

SEC. 3. The tribunal transacting county business for the county, including said town of Atchison, when organized, shall, from year to year, or whenever they may think proper, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted at the landing; and any charge made or extorted by said before-named persons, or their assigns, more than the rate fixed by said tribunal, shall be and create a forfeiture of all their privileges under this act.

Said ferry to be kept within one mile of Atchison, up and down the Missouri river: sufficient bonds to be executed, to be approved by tribunal transacting business.

SEC. 4. The said persons before named shall have the exclusive privilege of establishing and keeping a ferry within the limits of said town of Atchison, and within one mile of the same up and down the said Missouri river, on the Kansas side thereof, for the period aforesaid; but the said persons or their assigns shall execute sufficient bonds, to be approved by the tribunal aforesaid, and shall renew the same whenever required by said tribunal or other competent authority, conditioned that they will comply with all the conditions and provisions of this act.

The said bond shall be filed in the office of said tribunal transacting county business, and may be sued on by any person aggrieved, injured or unnecessarily detained by said ferry; and a copy of the same, under the seal of said tribunal, properly attested, shall be sufficient evidence of the contents of said bond on the trial had for damages.

Authority to proceed by filing bond with secretary of territory.

Sec. 5. Until said tribunal transacting county business shall be organized, said persons shall be allowed to proceed under this act by filing said bond with the secretary of the territory.

Ferry to be kept in good repair and order: reasonable time to repair losses.

Sec. 6. The said persons so chartered, and their assigns, shall keep the said ferry and its appurtenances in good repair and condition, but shall always be allowed a reasonable time to repair, or, in case of the loss of a boat, to procure another.

Non-compliance works forfeiture of charter.

Sec. 7. A non-compliance with the provisions of this act shall work a forfeiture of this charter.

This act to take effect and be in force from and after its passage.

CHAPTER 18.

An act to incorporate a ferry at the town of Kickapoo, in the territory of Kansas.

§ 1. Power granted to Lewis Burnes, D. D. Burnes, J. N Burnes, J. C. Ellis and J. Ellis to establish a ferry at Kickapoo.
2. Boats properly manned to be furnished.
3. Tribunal transacting county business to fix the rate of ferriage.
4. Said Burnes, Brothers & Co. to execute a good and sufficient bond to comply with the provisions of this act.
§ 5. To keep the said ferry and its appurtenances in good condition.
6. Failure to comply works a forfeiture of charter.
7. Exclusive right granted by the provisions of this act.

Be it enacted by the Governor and Legislative Assembly of the territory of Kansas, as follows:

Power granted to Burnes, Brothers & Co. to establish a ferry at the town of Kickapoo, in the territory of Kansas.

Section 1. Lewis Burnes, Daniel D. Burnes, James N. Burnes, John C. Ellis and Isaac Ellis, under the name, firm and style of Burnes, Brothers & Co., their heirs or assigns, are hereby authorized to keep a public ferry across the Missouri river, opposite the town of Kickapoo, Kansas territory, for the term of fifteen years from and after the passage of this act, and have a landing on the south side of said river upon the land owned by the United States, and occupied and claimed, wholly or in part, by John C. Ellis and the Kickapoo Town Association.

Boats propelled by steam, and properly manned and attended, to be furnished.

Sec. 2. The said Burnes, Brothers and Company consent and agree that a good substantial boat or boats, adapted to the wants of the public at the town of Kickapoo aforesaid, shall be kept by them or their assigns; the said boat or boats to be properly manned and attended; such boat or boats to be propelled by steam, and to be kept in good repair.

Tribunal transacting county business to fix the rates of ferriage, and list of same to be posted.

SEC. 3. The tribunal transacting county business for the county, including the town of Kickapoo, when organized, shall, from year to year, or whenever they shall see proper, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted up at the landing; and any charge made or extorted by said before-named persons, or their assigns, more than the rates fixed by said tribunal, shall be and create a forfeiture of all their privileges under this act.

Must execute a good and sufficient bond, faithfully to comply with the provisions of this act; bond to be filed in the office of said tribunal transacting county business.

SEC. 4. The said Burnes, Brothers and Company, or their assigns, shall execute sufficient bonds, to be approved by the tribunal transacting county business, before starting said ferry under this act, and shall renew the same whenever required so to do by the tribunal transacting county business for the county, including the town of Kickapoo, when organized, thereafter conditioned that they will comply with all the conditions and provisions of this act; the said bond shall be filed in the office of the said tribunal transacting county business, and may be sued on by any person aggrieved, injured or unnecessarily detained by said ferry; and a copy of the same, under the seal of the tribunal transacting county business, properly attested, shall be sufficient evidence of said bond on the trial had for damages.

Shall keep said ferry in good condition.

SEC. 5. The said Burnes, Brothers and Company, or their assigns, shall be required to keep the said ferry and its appurtenances in good repair and condition.

Non-compliance works a forfeiture of charter.

SEC. 6. A non-compliance with any of the provisions of this act shall work a forfeiture of this charter.

Exclusive right conferred to establish a ferry.

SEC. 7. This act shall and does confer upon the said Burnes, Brothers and Company the exclusive right to establish a ferry within one mile of said Kickapoo city or town, in the territory of Kansas, on the south side of the Missouri river aforesaid.

This act to take effect and be in force from and after its passage.

CHAPTER 19.

An act to establish a ferry at Thompson's landing, in Kansas territory.

§ 1. Authority to Henry Thompson to keep a ferry for fifteen years.
2. What kind of a boat to be kept at said ferry.
§ 3. Tribunal to fix rates of ferriage; rates to be posted at landing.
4. Non-compliance with provisions of the act to work forfeiture of charter, &c.

Whereas Henry Thompson, a resident of the territory of Kansas, has established a ferry at Thompson's landing, in said territory, opposite St. Joseph, in Missouri, which ferry has been in operation for several years, and, for which, privilege has been granted by the city of St. Joseph, in Missouri; therefore,

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

At what place said ferry to be kept.

SECTION 1. That Henry Thompson, his heirs and assigns, be and hereby are authorized to keep a ferry at what is known as Thompson's ferry, on the Missouri river, in the territory of Kansas, opposite St. Joseph, in the state of Missouri, and shall have the exclusive privilege of keeping the same at said point, and on his claim or land, including sand-bar due east as far as said claim or land goes on the Missouri river, in said territory, for and during the period of fifteen years.

The kind of boats to be kept, how manned, &c.

SEC. 2. That said Henry Thompson, his heirs and assigns, shall keep ready for use a good substantial boat or boats adapted to the wants of the public at the place above designated; the said boat or boats to be propelled by steam, properly manned and attended, and kept in good repair, unless through unavoidable accident it cannot be done; *provided*, that said Thompson may substitute a flatboat or boats instead of such steamboats when the business of said ferry does not require the same.

Tribunal to fix rates of ferriage.

SEC. 3. The tribunal transacting business for the county in which such ferry is located, when organized, shall, whenever they deem it necessary, fix the rates of ferriage to be charged at said ferry, and a list of the same shall be posted at the landing; and any charge made or extorted by said Thompson or his assigns, more than the rate fixed by said tribunal, shall create a forfeiture of all privileges under this act.

Non-compliance to work forfeiture of charter, &c.

SEC. 4. A non-compliance with the provisions of this act shall work not only a forfeiture of its charter, but the said Thompson, or his assigns, may be sued for any damage or injury sustained by any person through the non-compliance aforesaid, and for unnecessary detention in the premises.

This act to take effect and be in force from and after its passage.

CHAPTER 20.

An act establishing a ferry at the town of Doniphan, in the territory of Kansas.

§ 1. Who shall keep ferry.
2. County tribunal shall fix rates, &c.
3. Bond to be executed.
§ 4. Shall be subject to all laws, &c.
5. Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. John Landis, of said territory, is hereby authorized to keep a public ferry on the Missouri river, and have a landing on the west side thereof, at the town of Doniphan, and to have the exclusive right to keep a public ferry within the limits of said town, and above said town as far as the claim of said lands extend.

Who shall keep ferry.

Limits, &c.

SEC. 2. The tribunal transacting county business shall, from time to time, regulate the charges to be allowed at the said ferry, which shall be posted up at the ferry landing; and any charge made or extorted by said Landis, or any person in his employ, exceeding the rates allowed by said tribunal, shall be held as a forfeiture of all rights under this act.

County tribunal shall fix rates, &c.

SEC. 3. The said Landis shall give bond to the territory conditioned that he will keep good and sufficient boats, at all times, sufficient for the accommodation of the public at said ferry, and comply fully with all the terms and conditions of this act; said bond shall be filed with the tribunal transacting county business, and may be sued on by any person who may be injured or unnecessarily delayed at said ferry.

Bond to be given; good boat to be kept, &c.

SEC. 4. Said ferry shall be subject to all laws now in force, or which may hereafter be enacted by the legislative assembly of the territory of Kansas.

Shall be subject to all laws, &c.

SEC. 5. A non-compliance with any of the provisions of this act shall work a forfeiture of all rights under it.

Forfeiture of charter.

This act to take effect from and after its passage, and be in force ten years.

CHAPTER 21.

An act to authorize Fox B. Booth to keep a ferry.

§ 1. Who shall keep ferry.
§ 2. County tribunal to fix ferriage.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who shall keep ferry.

Section 1. Fox B. Booth is hereby authorized to keep a ferry across Kansas river, opposite the town of Pawnee, in the territory of Kansas, and shall have the exclusive right and privilege of keeping a ferry within the limits of a tract of land now owned by him, lying and being opposite the said town of Pawnee, in the aforesaid territory of Kansas, for the term of ten years.

County tribunal to fix ferriage.

Sec. 2. That the tribunal for the transaction of county business in and for the county in which the said ferry shall be situated, is hereby authorized and required to regulate the ferriage across said river, from time to time, as the same may be deemed proper.

This act to take effect and be in force from and after its passage.

CHAPTER 22.

An act to establish a ferry at the town of Delaware, in the Territory of Kansas.

§ 1. Who shall keep ferry.
2. Good boat to be kept.
3. County tribunal to fix rate of ferriage.
4. Bond shall be executed.
5. Can proceed under this act.
6. Shall keep ferry in good repair.
7. Not required to run a steamboat.
8. Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who shall keep ferry.

Section 1. That George Quimby, Wm. H. Spratt, Wm. D. Brumell and W. Christizon, their heirs and assigns, are hereby authorized and empowered to keep a public ferry across the Missouri river, at the town of Delaware, in the territory of Kansas, for the term of twenty years from and after the passage of this act; and they shall have a landing on the west side of said river, upon the land owned and claimed by the Delaware Town Company or others within the town limits.

Landing, &c.

Good boat to be kept.

Sec. 2. Said above named persons hereby consent, promise and agree, that a good and substantial boat or boats, adapted to the wants of the public at the town of Delaware aforesaid, shall be kept by them or their assigns; the said boat or boats to be properly manned, attended and propelled by steam, horse power or otherwise, and kept in good repair.

County tribunal to fix rate of ferriage.

SEC. 3. The tribunal transacting county business for the county, including said town of Delaware, when organized and established, shall, from year to year, or whenever they may think proper, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted up at the landing; and any charge made or extorted by said before-named persons, their heirs or assigns, more than the rates fixed by said tribunal, shall be and create a forfeiture of all their privileges under this act.

Limits, &c.

SEC. 4. The said persons hereinbefore named, their heirs and assigns, shall have the exclusive privilege of establishing and keeping a ferry within the limits of said town of Delaware, and within one mile of the same up and down the said Missouri river, on the Kansas or west side thereof, for the period of twenty years aforesaid; but the said persons, their heirs and assigns, shall execute a sufficient bond, to be approved by the tribunal aforesaid, and shall renew the same whenever required by said tribunal or other competent authority, conditioned that they will comply with all the conditions and provisions of this act; the said bond shall be filed in the office of the said tribunal transacting county business, and may be sued on by any person aggrieved, injured or unnecessarily detained by said ferry; and a copy of the same, under the seal of said tribunal, properly attested, shall be sufficient evidence of the contents of said bond on a trial had for damages.

Bond, &c.

Shall renew the same.

Can proceed under this act.

SEC. 5. Until said tribunal transacting county business shall be organized, said persons, their heirs and assigns, shall be allowed, and they are hereby authorized, to proceed under this act by filing said bond with the secretary of the territory.

Shall keep in good repair.

SEC. 6. The said persons so chartered, their heirs and assigns, shall keep the said ferry and its appurtenances in good repair and condition, but shall always be allowed a reasonable time to repair, or, in case of the loss of the boat, to procure another.

Not required to run a steamboat.

SEC. 7. The said persons so chartered, their heirs and assigns, shall not be required to run a steam ferry boat until the first day of April next, any thing herein to the contrary thereof notwithstanding.

Forfeiture of charter.

SEC. 8. A non-compliance with the provisions of this act shall operate as and work a forfeiture of this charter and the privileges granted under it.

This act to take effect and be in force from and after its passage.

CHAPTER 23.

An act to establish a ferry at the town of Leavenworth, in the territory of Kansas.

§ 1. Privilege granted to establish a ferry at Leavenworth, in Kansas territory.
2. Safe and good boats to be furnished at said ferry.
3. Rates of ferriage for articles enumerated.
4. Road to be kept open and in good order for travelling.
5. Good and sufficient bond to be filed for a compliance.
6. To be sued on bond for injury sustained.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

To whom granted.

SECTION 1. Thos. C. Shoemaker, Jarrett Todd, Samuel D. Pitcher, and their associates, heirs, executors, administrators and assigns, shall have the exclusive right and privilege, for the period of twenty years from and after the passage of this act, of keeping and maintaining a public ferry across the Missouri river, at the present limits of the town of Leavenworth, in the territory of Kansas, and no other ferry shall be established within two miles of the present limits of the town of Leavenworth aforesaid; *provided*, that the ferry landing on the west side of the Missouri river shall be restricted to and confined within the limits of said town.

Limits, &c.

Good boat to be kept.

SEC. 2. The said Thos. C. Shoemaker, Jarrett Todd and Samuel D. Pitcher shall, at all times, keep a safe and good boat or boats in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both night and day; but persons wishing to cross at said ferry in the night may be charged double fare as hereinafter prescribed; *provided*, that the boat to be used from and after the first day of September, eighteen hundred and fifty-seven, shall be a steam ferry boat.

Prompt and ready attention to be given.

Rates of ferriage.

SEC. 3. The said Thomas C. Shoemaker, Jarrett Todd, Samuel D. Pitcher and their associates shall be permitted to charge, not to exceed the following rates, for crossing at the above ferry, until otherwise provided by law: For each foot passenger ten cents; for each horse, mare, gelding, mule or ass, with or without rider, twenty-five cents; for each two-horse team, loaded or unloaded, with driver, seventy-five cents; for each single horse carriage, fifty cents; for each additional cow or ox, fifteen cents; for each swine or sheep, five cents; for all freight of lumber, merchandise or other articles not in teams, at the rate of fifteen cents per ——;

for each thousand feet of lumber, one dollar per thousand pounds; for all other articles, five cents.

SEC. 4. The said Thomas C. Shoemaker, Jarrett Todd and Samuel D. Pitcher shall have the exclusive privilege of landing passengers upon the island opposite to and immediately east of the said town of Leavenworth; *provided*, that the said Thomas C. Shoemaker, Jarrett Todd and Samuel D. Pitcher shall, at all times, keep a good road open from said island to the main shore on the east side of the river, unless a bridge should, at some future time, be built to the east shore, and in that case said road need not be kept open; but persons paying ferriage at said ferry shall not be charged toll for crossing on said bridge. Exclusive right to land passengers. Good boat to be kept.

SEC. 5. The said Thos. C. Shoemaker, Jarrett Todd and Samuel D. Pitcher shall, within three months after the organization of a county court, according to law, in the county in which the town of Leavenworth shall be situated, file or cause to be filed with the clerk of said court, a bond to the said court, with two or more good and sufficient securities to be approved of by said court, in the penal sum of two thousand dollars, conditioned that they will fulfill all the duties that are imposed upon them in the foregoing sections; and, in case of their failure or neglect so to do, shall forfeit all the benefits that might have accrued to them from the passage of this act. Bond to be filed. Condition of, &c.

SEC. 6. Any person who shall sustain an injury by the wilful negligence or default of the said Thomas C. Shoemaker, Jarrett Todd and Samuel D. Pitcher, or the ferrymen in their employ, may have a remedy by an action upon the bonds required by this act. Remedy for injury upon bond.

This act shall take effect and be in force from and after its passage.

CHAPTER 24.

An act to establish a ferry opposite the town of St. Joseph, and in the territory of Kansas.

§ 1. Who shall keep ferry.
2. Good boat to be kept.
3. County tribunal to fix rates.
§ 4. Bond to be filed.
5. Can proceed under this act.
6. Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Robert Jessee and Ebenezer Blackiston, their associates and assigns, are hereby authorized to keep a public ferry on the Missouri river, opposite the town of St. Joseph, Who shall keep ferry.

Right, &c.

and on the land claimed by said Blackiston, and belonging to the United States, for the term of twenty years from and after the passage of this act, and to have and possess the exclusive right to have and keep a public ferry on the land held and claimed as aforesaid.

Good boat to be kept.

Proviso.

Sec. 2. The said above-named persons agree that a good and substantial boat or boats shall be kept in constant readiness at said ferry, suitable to the wants of the territory; to be properly manned and attended, and to be kept in good repair: *Provided*, the said above-named persons shall procure, within six months next ensuing after the passage of this act, a good and sufficient steam ferry boat for said ferry; and *provided further*, they shall be allowed proper and necessary time to repair or procure a new boat, in case of accident, or loss of a boat; and *provided further*, that Jessee, Blackiston, and their associates, may establish a flatboat or boats, instead of such steamboat, when the business of said ferry does not require the same.

County tribunal to fix rates.

Sec. 3. The tribunal transacting county business for the county including said ferry, when organized, shall, from time to time, whenever they think proper, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted at the ferry landing; and any charge made or extorted, by said persons or their associates, more than the rates prescribed by said tribunal, shall be and create a forfeiture of all their privileges under this act.

Bond to be executed.

May be sued on, &c.

Sec. 4. Said persons aforenamed shall, before proceeding to establish and put in operation said ferry, execute sufficient bonds, to be approved by the tribunal aforesaid, conditioned that they will comply with and fully observe all the conditions and provisions of this act; the said bond to be filed in the office of the tribunal aforesaid, and may be sued on by any person aggrieved, injured or unnecessarily detained at said ferry; and a copy of the same, under the seal of said tribunal transacting county business, properly attested, shall be sufficient evidence of the contents of said bond on the trial for damages.

Can proceed under this act.

Sec. 5. Until said tribunal transacting county business shall be organized, said persons shall be allowed to proceed under this act by filing said bond with the secretary of the territory.

Forfeiture of charter.

Sec. 6. A non-compliance with this act shall work a forfeiture of this charter.

This act to take effect and be in force from and after its passage.

CHAPTER 25.

An act to establish a ferry at the mouth of the Kansas river, across said river.

§ 1. Who shall keep ferry.
2. Good boat to be kept.
3. County tribunal to fix rates.
4. Bond to be executed.
§ 5. Can proceed under this act.
6. Shall keep ferry in good repair.
7. Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Silas Armstrong, his heirs and assigns, are hereby authorized and empowered to keep a public ferry across the Kansas river, at the mouth thereof, for the term of fifteen years from and after the passage of this act, and he shall have a landing on both sides of said river anywhere within two miles from the mouth thereof up the banks of the same. Who shall keep ferry.

SEC. 2. The said Silas Armstrong hereby consents, agrees and promises that a good substantial boat or boats, adapted to the wants of the public at the above named place, shall be kept by him, his heirs and assigns; the said boat or boats to be properly manned, attended and propelled; but he is not nor shall be compelled to run a steam ferry boat: and the said Silas Armstrong further agrees and promises to keep said boat or boats in good repair and running order. Good boat to be kept. Not required to run a steamboat.

SEC. 3. The tribunal transacting county business for the county, including that portion of the place where the said ferry is kept, on the north side of said river, when organized and established, shall, from year to year, or whenever it may think proper, fix the rate of ferriage to be charged at said ferry, and a list of the same shall be posted up at the landing or crossing of said boat or boats; and any charge made or extorted by the said Silas Armstrong, his heirs or assigns, more than the rates fixed by said tribunal, shall create and be a forfeiture of his rights and privileges under this act. County tribunal shall fix the rate of ferriage. Forfeiture of charter.

SEC. 4. The said Silas Armstrong, his heirs and assigns, shall have the exclusive privilege to establish and keep a public ferry within the limits aforesaid, for the period aforesaid; but the said Silas Armstrong, his heirs and assigns, shall execute a good and sufficient bond to be approved by the said tribunal transacting county business, and shall renew the same whenever required by said tribunal or other competent authority, conditioned that he will comply with all the conditions and provisions of this act; the said bond shall be filed in the office of said tribunal, and may be Bond to be executed. Bond shall be filed.

sued on by any person aggrieved, injured or unnecessarily detained by said ferry; and a copy of the same, under the seal of said tribunal, properly attested, shall be sufficient evidence of the contents of said bond in the trial had for damages.

Can proceed under this act.

SEC. 5. Until said tribunal transacting county business shall be organized, said Silas Armstrong, his heirs or assigns, may be allowed to proceed under this act by filing said bond with the secretary of the territory.

Shall keep ferry in good repair.

SEC. 6. The said Silas Armstrong, his heirs or assigns, shall keep the said ferry and its appurtenances in good repair and condition, but shall always be allowed a reasonable time to repair, or, in case of the loss of a boat, to procure another.

Forfeiture of charter.

SEC. 7. A non-compliance with the provisions of this act shall work a forfeiture of the charter herein granted.

This act to take effect and be in force from and after its passage.

CHAPTER 26.

An act to establish a ferry on the Marais des Cygnes river, in the territory of Kansas.

§ 1. Who shall keep ferry.
2. County tribunal can destroy charter, &c.
3. Bond to be given.
4. Shall be subject to all laws, &c.
5. Forfeiture of charter,

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Who shall keep ferry.

SECTION 1. That Martin Taylor and John Ballard be and are hereby authorized to establish a ferry across the Marais des Cygnes river, in said territory, on the lands claimed by them, at or near their own ford, to have and to hold the exclusive right to keep said ferry, within two miles of the above-named ford, for the space of ten years.

County tribunal shall keep posted up as regards condition of ferry.

SEC. 2. The tribunal transacting county business shall, from time to time, regulate the charges to be allowed at said ferry, which shall be posted up at the ferry landing; and any charge made or extorted by said Martin Taylor and John Ballard, or any person in their employ, exceeding ———, shall work a forfeiture of all rights and benefits arising under this act.

Bond to be given.

SEC. 3. The said Martin Taylor and John Ballard shall give bond to the territory, conditioned that they will keep good and sufficient boats at all times for the accommodation of the public at said ferry, and comply fully with all the terms and conditions of this act; said bond shall be filed at the office of the tribunal transacting county business, and may be sued on by any person who may be injured or unnecessarily detained at said ferry.

SEC. 4. Said ferry shall be subject to all laws now in force, or which may hereafter be enacted by the legislative assembly of the territory of Kansas, in relation to ferries. Shall be subject to all laws.

SEC. 5. A non-compliance with any of the provisions of this act shall work a forfeiture of all rights under it. Forfeiture of charter.

This act to take effect and be in force from and after its passage, and be in force ten years.

CHAPTER 27.

An act to establish a ferry at Lewis' Point, on the Missouri river.

§ 1. Who shall keep ferry.
2. Shall keep sufficient boats.
§ 3 Forfeiture of charter.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Calvin Lewis, his heirs and assigns, are hereby authorized to keep a ferry at what is known as Lewis' ferry, on the Missouri river, in the territory of Kansas, and shall have the exclusive privilege of keeping the same at said point, and within one mile up and down the river from the same, for and during the period of ten years. Who shall keep ferry.

SEC. 2. The said Calvin Lewis shall keep ready for use sufficient boat or boats to do all the crossing at said ferry, and shall give bond and be subject to all the laws regulating ferries now in force, or which may be hereafter made in said territory. Shall keep sufficient boat.

SEC. 3. A non-compliance with any of the provisions of this act shall work a forfeiture of all rights under it. Forfeiture of charter.

This act to take effect and be in force from and after its passage.

CHAPTER 28.

An act to incorporate Fort Scott University.

§ 1. Fort Scott University.
2. Corporate powers, how vested; members of the first board.
3. Powers of the board of trustees.
4. May grant diplomas, &c.
§ 5. Funds to be appropriated, how.
6. No power to create debts, &c.
7. Who to fix time of first meeting.
8. Property free from taxation.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Fort Scott University.

SECTION 1. An institution is hereby created and established, at the town of Fort Scott, for the purpose of educating youth and extending the interests of sound and liberal learning, to be called and known by the name of the "Fort Scott University," which shall be under the government and regulations of a body politic and corporate as hereafter in this act provided.

Corporate powers vested in a board of trustees.

SEC. 2. The corporate powers of said university shall be vested in a board of trustees, to consist of not less than seven nor more than eleven persons, and the president of the university shall be ex officio a member of said board; said board shall have power to fill all vacancies that may occur in the same and to elect new members thereof; Hir. T. Wilson, Alfred Hornbeck, William J. Burnes, A. M. Coffee, William P. Richardson, Lucien J. Eastin, H. I. Strickler, R. R. Reese, A. McDonald, D. A. N. Grover, John Donaldson, J. W. Foreman, W. J. Godfroy, Joseph C. Anderson, William Heiskell, William G. Matthias, F. Marshall, Alexander Johnson, Thomas J. Whitlock, F. Demest, to be the first members of said board.

Members of first board.

Powers of board of trustees.

SEC. 3. The board of trustees and their successors, forever, have full power and authority to appoint out of their number their president, and such professors, teachers, officers, agents and servants as may be deemed useful and necessary; to displace the same, and to declare their duties, tenures and emoluments; to remove a trustee for any cause which a majority of the whole number may deem sufficient; to define the qualifications of a trustee; to enact and enforce, by proper penalties or otherwise, all such statutes and ordinances as shall be deemed expedient for the management of the interests of the university, and for the advancement of science, learning, morality and piety, so that the same be not repugnant to the laws of this territory; to establish different departments of said university; to confer degrees and distinguishment by such literary honors and rewards as they may judge proper, and generally and particularly to possess and enjoy all those powers, rights and privileges usually exercised and enjoyed by universities; but no corporate business shall be transacted at any meeting of said board unless five members are present, which number shall be a quorum.

May grant diplomas, &c,

SEC. 4. Said corporation shall have a common seal, with some distinctive device and inscription; and all deeds and other instruments relating to the revenues or proprietary interests of their university, and all diplomas or other testimonials to distinguish literary merit, when signed, sealed and delivered by the president of the university, in accordance with the order of the board of trustees, shall be in law the act of said corporation, and not otherwise. Said corporation may contract with, and may sue and be sued, in and by their corporate name aforesaid, in all actions, real, personal and mixed; may receive and hold, by gift, grant or otherwise, any lands, tenements and hereditaments, money, rents, goods, chattels and effects, which are given, granted, bequeathed or devised to or purchased by said trustees for the use of said university, and may manage the same in such manner as may be judged most expedient for the promotion of the interests of said university, subject however to the provisions of the following sections of this act.

Trustees to be appointed, how.

SEC. 5. The property and funds of said university shall be exclusively appropriated by the board to the endowment and support of the institution in such manner as will most effectually promote sound learning, virtue and piety; but no property or funds given for a specified purpose, or on certain conditions, shall be appropriated to any other object or in any other way than those directed by the donor, or be subjected to any claims or incumbrances by which they may be diverted from the purposes for which they were given.

No power to create debts, &c.

SEC. 6. Said board of directors shall not have power to create debts that will incumber or alienate the real estate or impair the permanent funds of the institution, nor any debt beyond its resources and means of payment; and its financial affairs shall be conducted in a safe, economical manner, and as far as practicable on the cash principle.

Who to fix time of first meeting.

SEC. 7. The person first named in this act as a member of the said board of trustees, or, in case of his absence or inability to act, the person named second, shall fix the time and place of holding the first meeting of said board of trustees, of which he shall give notice in writing to each member at least three days previously thereto.

Property free from taxation.

SEC. 8. Any property belonging to said corporation, as prescribed by the foregoing sections, shall forever be free from taxation.

This act to take effect and be in force from and after its passage.

CHAPTER 29.

An act to incorporate the town of Delaware.

§ 1. Boundaries of the town of Delaware.
2. Powers vested in a board of trustees.
3. To consist of five members.
4. First board of trustees.
5. To appoint constables, &c.
§ 6. Powers of the president of the board.
7. Election to be held; when.
8. Powers of the board of trustees.
9. To open streets and alleys.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries of the town of Delaware.

Section 1. All that country comprised within the limits of the town of Delaware shall be and the same is hereby incorporated into a town, to be called the incorporation of the town of Delaware, and by the name of the town of Delaware shall be known in law, have perpetual succession, sue and be sued, implead and be impleaded, defend and be defended, in all courts of law and equity, and in all matters whatever; may grant, purchase, receive and hold property, real, personal and mixed, within said town; or may purchase or receive, by donation or otherwise, any amount of land, anywhere within three miles of said town, necessary for the purposes of a burial ground; and may, by said name, do all acts as natural persons; may have a common seal, and may alter or change the same at pleasure.

Powers vested in trustees.

Sec. 2. The corporate powers and authority of said town of Delaware are hereby vested in a board of trustees, to be called the board of trustees of the town of Delaware.

To consist of five members.

Sec. 3. The board of trustees shall consist of five members, and shall have power and authority to pass all ordinances of every nature necessary for the good of the town, and not inconsistent with the constitution or laws of the United States or the laws of this territory.

First board of trustees.

Sec. 4. Leander F. Hollingsworth, William D. Bonnell, Wilburn Christizon, David Churchill and William F. Sprague are hereby made and constituted the first board of trustees for said town of Delaware; and such board shall meet at such time as they may determine upon and shall select one of their number as president of the board; they shall also select a clerk of the board.

To appoint constable, &c.

Sec. 5. The board of trustees may appoint a town constable, assessor, collector, treasurer, and such other agents and officers as they may deem necessary, and provide for the pay of such officers and agents, and prescribe their powers and duties.

Powers of the president of the board.

Sec. 6. The president of the board of trustees shall have all the powers and privileges of a justice of the peace, within the corporate limits of the said town of Delaware, in all matters arising under the ordinances of said town, and he shall sit on the trial of all violations of any of the ordinances, and shall do and perform all duties under and by virtue of any ordinance which may be prescribed by any ordinance of the board of trustees ; *provided*, that in cases of vacancy or absence of such president of the board, any justice of the peace shall have and possess all the judicial powers and duties of such president under any of such ordinances ; and such president shall receive the same fees as a justice of the peace for similar services.

Election to be held, when.

SEC. 7. There shall be held on the first Monday in each year, at such place or places as the board of trustees shall select, an election for five trustees ; and the five persons having the highest number of votes shall be declared elected, and such election shall be conducted and such trustees shall be qualified in such manner as may be prescribed by ordinance, and all ties may be decided and all vacancies filled in such manner as may be prescribed by ordinance.

Powers of the board of trustees.

SEC. 8. The board of trustees shall have power, by ordinance, to levy and collect a tax on all lawful subjects of taxation not exceeding one-half of one per cent., and to prevent and remove all nuisances ; to prevent and restrain bawdy and gambling houses and other disorderly houses ; to restrain or prohibit tippling-houses, dram-shops, ten-pin alleys or other gambling devices ; to regulate circuses, shows, theatrical or other amusements ; to restrain and prevent the meeting of slaves ; to prevent firing ; to protect property from fires ; to prevent the introduction or spread of diseases ; and, by ordinance, to do all other lawful acts necessary to the well-being of said town.

To open streets and alleys.

SEC. 9. The board of trustees shall have power to open and keep in repair all streets and alleys in said town.

This act to take effect and be in force from and after its pasage.

CHAPTER 30.

An Act to incorporate the Delaware Town Company.

§ 1. Names of corporators ; authority.
2. Powers of the corporation.
§ 3. May pass by-laws, &c.
4. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That R. P. Clark, E. H. Norton, Will. Dickey, L. F. Hollingsworth, William Christison, William B. Almond, Daniel P. Lewis, L. Shepherd, William H. Spratt, R. N. Johnson, John Wilson, H. B. Wallace, Amos Reese, Benjamin F. Hollingsworth, William D. Burnell, Peter T. Able, Joseph Walker, Galatia Sprague, Charles W. Bingley, George Quimby, their associates and successors, are hereby constituted and declared a body politic and corporate by the name and style of the Delaware Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in all courts of law or equity in this territory; said company is authorized to have and to use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its officers.

Authority.

Powers of corporation.

Sec. 2. The corporation hereby created shall have power to purchase and hold, and enter by pre-emption or otherwise, any quantity of land where said town of Delaware is now located, not to exceed one thousand acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same.

May pass by-laws, &c.

Sec. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of said company shall be signed by said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged, and when so duly executed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

Stock deemed personal property, &c.

Sec. 4. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and transferring of said stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 31.

An act to incorporate the Marysville Town Company.

§ 1. Names of corporators; authority; powers of corporation.
2. May pass by-laws, &c.
§ 3. May fill vacancies.
4. Stock deemed personal property, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That A. G. Woodward, David Galispie, John Doniphan, R. T. Gillespie, F. J. Marshall, James Doniphan, Robert C. Bishop, M. G. Shrewsbury, and their successors, are hereby constituted and declared a body politic and corporate by the name of the Marysville Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in law or equity, in this territory; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land where said town of Marysville is now located, not exceeding one thousand acres, and to lay off the same into lots, parks, streets, squares and avenues, and to sell and dispose of and convey the same.

Names of corporators.

Authority.

Powers of corporation.

SEC. 2. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged as the conveyances of real estate; when so signed and acknowledged, shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

May pass by-laws, &c.

SEC. 3. The above-named board of trustees shall have power to fill vacancies which may occur in their body by death, resignation or otherwise.

May fill vacancies.

SEC. 4. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for issuing and transferring said stock by each individual stockholder.

Stock deemed personal property, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 32.

An act to incorporate the town company of Iola, in the county of Doniphan, in the territory of Kansas.

§ 1. Names of corporators; authority.
2. Powers of corporation.
§ 3. May pass by-laws, &c.
4. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas as follows:

Names of corporators.

SECTION 1. Daniel Vanderslice, A. Q. Rice, William C. Remington, Grandison R. Wilson, Wm. C. Baker, Josephus Utt, Galatia Sprague, W. Broadus Thompson, Levi Churchill, Thomas J. Vanderslice, John E. Pitt, John A. Dolman, James M. Mulkey, John W. Foreman, James N. Bradley, Frederick J. Ebert, James Churchill, John T. Ricks, Reuben Middleton, William E. Oliver, and Edward Branham, their associates and successors, are hereby declared and constituted a body politic and corporate by the name and style of the Iola Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in the courts of law and equity in this territory. Said company is authorized to have and to use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may by them be deemed necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

SEC. 2. The company hereby created shall have power to purchase and hold, or to enter by pre-emption or otherwise, any quantity of land in Kansas territory, where the town of Iola is located, not exceeding six hundred and forty acres, and to lay the same off into lots, parks, squares and avenues, and to sell, dispose of, and convey the same by deed.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as said company may by by-laws designate, and when so signed, with the corporate seal attached, shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

Stock deemed personal property.

SEC. 4. The stock of said company shall be deemed personal property, and said company may by by-laws prescribe rules for the issuing and transferring of same by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 33.

An act to incorporate the town of Benicia.

§ 1. Names of corporators; authority.
2. Powers of corporation.
3. May pass by-laws, &c.
§ 4. May prescribe rules for the transfer of stock.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Section 1. George W. Johnson, Andrew McDonald, Mathias D. Winter, their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Benicia Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to change the same at pleasure, and to make such by-laws as may be deemed necessary for the government of the said company and the management of its affairs.

Names of corporators.

Authority.

Sec. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, where the town of Benicia is now located, not to exceed four hundred acres, and to lay off the same into squares, blocks and lots, and to sell and dispose of and convey the same by deed.

Powers of corporation.

Sec. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by by-laws designate, and when so signed shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

May pass by-laws, &c.

Sec. 4. The said company may by by-laws prescribe rules for the transfer of the stock of said company by each individual stockholder.

May prescribe rules for transfer of stock.

This act to take effect and be in force from and after its passage.

CHAPTER 34.

An act to incorporate the town of Columbia.

§ 1. Names of corporators; authority.
2. Powers of corporation.
3. May pass by-laws, &c.
§ 4. May prescribe rules for the transfer of stock.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Authority.

SECTION 1. Thomas S. Huffaker, Charles H. Withington and William D. Harris, their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Columbia Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to attest [alter] the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, where the town of Columbia is now located, not to exceed six hundred and forty acres, and to lay off the same into lots, squares and blocks, and to sell and dispose of and convey the same by deed.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by by-laws designate, and when so signed shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

May prescribe rules for transfer of stock.

SEC. 4 The said company may by by-laws prescribe rules for the transfer of the stock of said company by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 35.

An act to incorporate the town of Washington.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
3. May pass by-laws, &c.
§ 4. May prescribe rules for the transfer of stock.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. F. P. McGee, George M. Redman, and M. W. McGee, their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Washington Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters; said company is authorized to have and use a common seal and to attest [alter] the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, where the town of Washington, or the town known as a Hundred and Ten, is now located, not to exceed six hundred and forty acres, and lay off the same into squares, blocks and lots, and to sell and dispose of, and convey the same by deed.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by its by-laws designate, and when so signed shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

May prescribe rules for transfer of stock.

SEC. 4. The said company may by by-laws prescribe rules for the transfer of the stock of said company by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 36.

An act to incorporate the Centreville Seminary and Town Association.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
§ 3. May pass by-laws
4. May erect a seminary, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That Samuel M. Irvin, Thomas W. Waterson, Daniel Vanderslice, Joel P. Blair, W. D. Hudnall, O. Brown, William P. Richardson, and James F. Foreman, their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Centreville Seminary and Town Association, and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal, to alter the same at pleasure, and to make such by-laws as may be necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of real estate in the county of Doniphan, not to exceed six hundred and forty acres, and to lay the same off into lots, squares, avenues, streets and alleys, and to sell and dispose of and convey the same.

May pass by-laws, &c.

SEC. 3. Said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by its by-laws designate, which deeds shall be acknowledged and recorded as other deeds of conveyance, and when so made and acknowledged shall be deemed and held a sufficient execution of the same in all courts of law in this territory.

May erect a seminary.

SEC. 4. Said company shall have further power to erect on said lands a seminary of learning, and shall prescribe rules and regulations for the government thereof; may provide for the erection of the necessary buildings, and receive donations in money, or in property, real, personal, or mixed; and may do all other acts and things necessary to carry out the provisions of this act not inconsistent with the provisions thereof.

This act to take effect and be in force from and after its passage.

CHAPTER 37.

An act to incorporate the Louisiana Town Company.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
3. May pass by-laws, &c.
§ 4. May fill vacancies.
5. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Daniel Jones, Horatio Owens, John M. Banks, F. M. Coleman, Joseph Fager, Thomas Emery, Zachariah Johnson, Richard Young, B. F. Bounds, William Cummins, Joshua Cummins, Jonah Wagoner, J. F. Bennet, Thomas Hopkins, Jacob Buckley, H. W. Younger, and Andrew J. Isaacs, their associates and successors, are hereby constituted and declared a body politic and corporate by the name and style of the Louisiana Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in all courts of law or equity in this territory; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as may from time to time be deemed necessary for the government of said company and the management of its affairs.

Names of corporators.

Authority.

SEC. 2. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land where the town of Salem is now located, not to exceed four hundred and eighty acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same, and said town shall be called Louisiana.

Powers of corporation.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of the said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged, and when so duly executed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

May pass by-laws, &c.

SEC. 4. The above-named board of trustees shall have power to fill vacancies which may occur in their body by death, resignation, or otherwise.

May fill vacancies.

Stock deemed personal property.

Sec. 5. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and transferring of said stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 38.

An act to incorporate the Atchison Town Company.

§ 1. Names of corporators.
2. May purchase and hold land.
§ 3. May pass by-laws, &c.
4. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That John H. Stringfellow, Peter S. Alell, Samuel R. Dickson, Elijah H. Norton, Lewis Burnes, Ira Norris, and their associates and successors, are hereby constituted a body politic and corporate by the name and style of the "Atchison Town Company," and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

May purchase and hold land.

Sec. 2. The corporation hereby created shall have power to purchase and hold any quantity of land, in Kansas territory, where the town of Atchison is now located, not to exceed six hundred and forty acres, and to lay the same off into parks, squares and lots, and to sell, dispose of and convey the same by deed.

May pass by-laws, &c.

Sec. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by by-laws designate, and when so signed, with the corporate seal attached, shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

Stock deemed personal property.

Sec. 4. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the transfer of the same by each individual shareholder or stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 39.

An act supplementary to an act entitled "an act to incorporate the Atchison Town Company."

§ 1. Who are deemed members.
2. Proceedings held as *prima facie* evidence.
§ 3. May institute actions, &c.
4. Not to impair rights of persons.
5. Declared a public act.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. All persons who are owners of stock in the Atchison Town Company, under the constitution and by-laws of the association, and all persons who have become, or who may here after become, entitled to any share of stock in the Atchison Town Company since its incorporation, shall be deemed members of such company so long as they shall be the owners of such stock. Who are deemed members.

SEC. 2. The books containing the proceedings of such company, or of the officers selected by such company to manage its affairs, and the articles of association heretofore entered into by the members of such association, with the proceedings of such company or association, certified by the president and secretary of such company under the seal of the company, or under their scrawls or private seals if there be no seal of the company, shall be held as *prima facie* evidence of such proceedings, and of the matters therein stated, in all courts and places in this territory. Proceedings held as *prima facie* evidence.

SEC. 3. Said company shall have the right to institute proper actions, in any court having jurisdiction, on all agreements made with the association heretofore known as the Atchison Town Company, or with any of its officers, as such, and on all agreements made with the company, and for all injuries, trespasses or entries upon, or unlawful detainers of any land included within the limits of the town of Atchison, as it is now or may be hereafter laid out by such association or company; and until such land is sold by the government of the United States, or of this territory, such company shall not be required to give further evidence of its title to the land in controversy than that the same is embraced within the outboundary of said town, as run by such association or company. May institute actions, &c.

SEC. 4. Nothing in this act shall be construed to impair the lawful rights of any person who may at any time be in the possession of any land included within the limits of said town. Not to impair rights, &c.

Declared public act.

Sec. 5. This act and the act to which this is supplementary shall be public acts, and so taken in all courts in this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 40.

An act to incorporate the town of Fort Scott.

§ 1. Boundaries of Fort Scott, as set forth in the plat.
2. Corporate powers, how vested.
3. Board of trustees.
4. First Board of trustees.
§ 5. Powers of the board.
6. Powers of the president of the board.
7. Election of trustees to be held.
8. Board may levy and collect taxes, &c.
9. To open streets, alleys, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries of Fort Scott, as set forth in plat.

Section 1. All that tract of country which may be comprised within the limits of the town of Fort Scott, in the county of Bourbon, and set forth and defined in the plat of said town of Fort Scott, shall be and the same is hereby incorporated into a town by the name of Fort Scott, and by that name shall be known in law, have perpetual succession, sue and be sued, implead and be impleaded, defend and be defended, in all courts of law and equity, and in all matters whatever; may grant, purchase, receive and hold property, real, personal and mixed, within said town; or may purchase or receive, by donation or otherwise, any amount of land, within the limits of said town, for the erection of a court-house, jail or other public buildings for the county of Bourbon; and also any amount of land, anywhere within three miles of said town, necessary for the purpose of a burial ground; and may, in the same name, do all acts as natural persons; may have a common seal, and may alter and change the same at pleasure.

Corporate powers, how vested

Sec. 2. The corporate power and authority of said town of Fort Scott is hereby vested in a board of trustees, to be called "the board of trustees of the town of Fort Scott."

Board of trustees.

Sec. 3. The board of trustees shall consist of six members, and shall have authority to pass all ordinances, of every nature, necessary for the good of the town, and not inconsistent with the constitution and laws of the United States or the laws of this territory.

First board of trustees.

Sec. 4. H. S. Wilson, A. Hornbeck, Thomas Dodge, R. G. Roberts, F. Denint and Thomas B. Arnott are hereby made and constituted the first board of trustees for said town of Fort Scott; and such board shall meet at such times as they may agree upon, and shall elect one of their number as president of the board; they shall also elect a clerk of the board.

Powers of board.

Sec. 5. The board of trustees may appoint a town constable, assessor, collector, treasurer, and such other agents and officers as they deem necessary, and shall provide for the pay of such officers and agents, and prescribe their powers and duties.

Powers of president of the board.

Sec. 6. The president of the board of trustees shall have all the powers and privileges of a justice of the peace, within the corporate limits of said town of Fort Scott, in all matters arising under the ordinances of said town; and he shall sit on the trial of all violations of any of the ordinances, and shall do and perform all duties under and by virtue of any ordinance which may be prescribed by said board of trustees; *provided*, that, in case of vacancy or absence of such president of the board, any justice of the peace shall have and possess all the judicial powers of said president, under any such ordinance; and such president shall receive the same fees as a justice of the peace for similar services.

Election for trustees to be held.

Sec. 7. There shall be held, on the first Monday in December, eighteen hundred and fifty-six, and on the first Monday of December every year thereafter, at the court-house in said town of Fort Scott, an election for six trustees, and the persons having the highest number of votes shall be declared duly elected; and such election shall be conducted and such trustees shall be qualified in such manner as may be prescribed by ordinance, and all ties may be decided and all vacancies filled in such manner as may be prescribed by ordinance.

Board may levy and collect taxes, &c.

Sec. 8. The board of trustees shall have power, by ordinance, to levy and collect taxes on all lawful subjects of taxation, not exceeding one-fourth of one per centum; to remove and prevent nuisances; to prevent and restrain bawdy houses, gambling houses and other disorderly houses; to restrain and prohibit gambling; to regulate or prohibit tippling-houses, dram-shops, ten-pin alleys or other gambling devices; to regulate circuses, shows, theatrical or other amusements; to restrain and prevent the meeting of slaves; to protect property from fires; to prevent the introduction and spread of diseases, and by ordinance to do all other things that may be necessary and lawful for the well-being of said town.

To open streets, alleys, &c.

Sec. 9. The board of trustees shall have power to open and keep in repair all streets and alleys in said town.

This act to take effect and be in force from and after its passage.

CHAPTER 41.

An act to incorporate the city of Pawnee.

§ 1. Boundaries of city of Pawnee; proviso. | § 2. Powers and privileges granted; proviso.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries of Pawnee.

SECTION 1. The town of Pawnee, situated on the north side of the Kansas river, and below the mouth of the Republican fork, is hereby erected into a city of the name and style of "Pawnee City," according to the limits and boundaries heretofore made and adopted by the trustees of said town; *provided,* the limits and boundaries of said city of Pawnee shall not contain more than one thousand acres of land, a plat or draft of which shall be filed in the office of the surveyor general within six months from the date of this act, and the inhabitants thereof are hereby constituted a body corporate and politic, in law, by the said name and style of "Pawnee City," and shall, by that name, have perpetual succession, sue and be sued, plead and be impleaded, make all contracts necessary and incidental to the exercise of the powers hereinafter conferred, and may purchase and hold, use and convey property, real and personal, within said city, and may make a common seal and change the same at pleasure.

Proviso.

Powers and privileges granted.

SEC. 2. All the powers, privileges, duties and responsibilities which are given, bestowed and imposed upon the city of Leavenworth by an act of the legislative assembly of the territory of Kansas, passed at the present session, entitled "an act to incorporate the city of Leavenworth," are hereby granted to and imposed upon the said city of Pawnee as fully as though the several sections of the said act were hereby repeated and enacted; *provided, however,* that the first election shall take place on the first Tuesday of October, eighteen hundred and fifty-six; said election to be by ballot, and to be conducted by three judges, to be appointed by the tribunal transacting county business for the county in which said city of Pawnee is situated; said judges to take and subscribe an oath faithfully to perform their duties, and they shall have power to appoint a clerk or clerks, and shall be governed by the law regulating elections; and *provided further,* that the board of councilmen shall have no power to borrow money or issue bonds of said city, to be placed into market at less than twenty per cent. discount, without special authority of law hereafter made; and *provided fur-*

Proviso.

ther, that a failure to elect officers of said city shall work a forfeiture of this charter of incorporation.

This act to take effect and be in force from and after its passage.

CHAPTER 42.

An act to incorporate the Lecompton Town Company.

§ 1. Names of corporators.
2. Powers of the corporation.
3. May pass by-laws, &c.
§ 4. May fill vacancies, &c.
5. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Aristides Rodrigues, Daniel Woodson, J. C. Thompson, C. Donaldson, William Thompson, their associates and successors, are hereby constituted and declared a body politic and corporate by the name and style of the "Lecompton Town Company," and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in all courts of law and equity in this territory. Said company is authorized to have and use a common seal, and to alter the same at pleasure, and to make such by-laws and regulations as, from time to time, may be deemed necessary for the government of said company and the management of its affairs. Vacancies in the board of directors, by death, resignation or otherwise, shall be filled by election by the stockholders, each stockholder casting one vote for each share he may hold, and such votes may be given by proxy. Names of corporators.

SEC. 2. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land where said town of Lecompton is now located, not to exceed one thousand acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same. Powers of corporation.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly signed and acknowledged as other conveyances of real estate; when so signed and acknowledged, shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere. May pass by-laws, &c.

May fill vacancies, &c.

Sec. 4. The above-named board of trustees shall have power to fill vacancies which may occur in their body by death, resignation or otherwise.

Stock deemed personal property.

Sec. 5. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and tranferring of said stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 43.

An act to incorporate the Neosho Town Association, Kansas terrritory.

§ 1. Names of corporators.
2. Powers of the corporation.
3. May pass by-laws, &c.
4. May prescribe rules, &c.
§ 5. To make a map of the town.
6. When not in an organized county.
7. Power to erect buildings, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That John Hollingsworth, H. J. Strickler, Benjamin F. Simmons, Charles H. Grover, William O. Yager and John Willis Johnston, their associates and successors, are hereby constituted and appointed a body politic and corporate, by the name and style of the "Neosho Association," and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded, in all matters whatsoever. Said company is authorized to have and use a common seal, and to alter the same at pleasure, and to make such by-laws as may be necessary for the government and management of said company.

Powers of corporation.

Sec. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, at or near where the Neosho or Grand river strikes the Osage reservation, not to exceed one thousand acres, and to lay the same off into parcels, squares and lots, and to sell, dispose of and convey the same by deed or otherwise.

May pass by-laws, &c.

Sec. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by their by-laws designate, which deeds shall be acknowledged and recorded as other deeds of conveyance.

SEC. 4. The company by by-laws may prescribe rules for the transfer of the stock of the same by each individual stock or shareholder. May prescribe rules, &c.

SEC. 5. The said company shall, before selling any part of said lands, lots, or parcels of land, make a out complete map of the same, which they shall file with the clerk of the court transacting county business in the county in which said town may be located, together with the list of officers elected by said association, and a copy of the by-laws by them adopted. To make a map of the town.

SEC. 6. Should said town not fall in a regularly organized county, then said plat shall be filed in the office of the clerk of the tribunal transacting county business of the county that may be organized to which said unorganized county may be attached. When not in an organized county.

SEC. 7. Said company shall have power to erect such building as they may deem necessary for their protection against the Indians and for the purposes of trade. Power to erect buildings, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 44.

An act to incorporate the Richmond Town Company.

§ 1. Names of corporators.
2. Powers of the corporation.
3. May pass by-laws, &c.
§ 4. May fill vacancies, &c.
5. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That F. J. Marshall, David Galispie, John Doniphan, Richmond Galispie, James Doniphan, A. G. Woodward, R. C. Bishop, James E. Thompson, John A. Dolman, Frederick J. Ebert, Cyrus Dolman, James O'Donoghue, Augustus Leist, John Donaldson and Daniel Vanderslice, and their successors, are hereby constituted and declared a body politic and corporate by the name and style of the Richmond Town Company, and by that name shall be capable of making contracts, suing and being sued, of pleading and being impleaded, in all matters whatsoever, in law or equity, in this territory; said company is authorized to have and to use a common seal and to alter it at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs. Names of corporators.

Powers of the corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land, where said town of Richmond is now located, not exceeding one thousand acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of said company shall be signed by such officers as said company shall designate, which deeds shall be duly executed and acknowledged as other conveyances of real estate; when so signed and acknowledged, shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

May fill vacancies, &c.

SEC. 4. The above named board of trustees shall have power to fill vacancies which may occur in their body by death, resignation, or otherwise.

Stock deemed personal property.

SEC. 5. The stock of the company shall be deemed personal property, and the said company may make by-laws and prescribe rules for the issuing and transferring of the said stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 45.

An act to incorporate the Tecumseh Town Association.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
3. May pass by-laws, &c.
§ 4. May fill vacancies.
5. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That Thomas N. Stinson, James Hunter, Abraham Coningo, Albert Elmore, A. J. Isaacs, James M. Hunter, and their associates and successors, are herby constituted and declared a body politic and corporate by the name and style of the Tecumseh Town Association, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in all courts of law or equity in this territory; said association is authorized to

Authority.

have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land, not to exceed six hundred and forty acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same, and said town shall be called Tecumseh.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such time as may be necessary to carry out the business of the said company; and all deeds for the conveyance of the real estate of the said company shall be signed by such officers of said company as the by-laws of said company designate, which deeds shall be duly executed and acknowledged, and when so duly executed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

May fill vacancies.

SEC. 4. The above-named board of trustees shall have power to fill vacancies which may occur in their body by death, resignation, or otherwise.

Stock deemed personal property.

SEC. 5. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and transferring of said stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 46.

An act to incorporate Fort Scott Town Company.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
§ 3. May pass by-laws, &c.
4. May prescribe rules for transfer of stock.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That Hiro T. Wilson, Alfred Harnbeck, Richard G. Roberts, William J. Barnes, William Barbee, and Samuel A. Williams, and their associates and successors, are hereby constituted a body politic and corporate by the name and style of Fort Scott Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, where the town of Fort Scott is now located, not to exceed nine hundred acres, and to lay the same off into parks, squares and lots, and to sell, dispose of and convey the same by deed.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by by-laws designate, and when so signed, with the corporate seal attached, shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

May prescribe rules for transfer of stock.

SEC. 4. The company may by by-laws prescribe rules for the transfer of the stock of the same by each individual shareholder or stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 47.

An act to incorporate the Lavinia Town Company, in Kansas territory.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
3. May pass by-laws, &c.
4. May prescribe rules for transfer of stock.
§ 5. Must make out a complete plat.
6. When plat to be filed in the office of clerk.
7. Power to erect buildings, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That William O. Yager, John Hollingsworth, John Martin, Benjamin Newsom, Benjamin F. Simmons, H. J. Strickler and John Willis Johnston, and their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Lavinia Town Association, and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and alter the

Authority.

same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, at or near where the Salt Fork and Arkansas rivers come the nearest together upon their crossing of the southern boundary line of the territory, and as near the union of said rivers as the boundary of the territory will allow, hereafter to be located by said company or association, not to exceed two thousand acres, and to lay the same off into parcels, squares and lots, and to sell, dispose of and convey the same by deed or otherwise.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by their by-laws designate, which deeds shall be acknowledged and recorded as other deeds of conveyance.

May prescribe rules for transfer of stock.

SEC. 4. The company by by-laws may prescribe rules for the transfer of the stock of the same by each individual stock or shareholder.

Must make out a complete plat

SEC. 5. The said company shall, before selling any part of said lands, lots or parcels of land, make out a complete map of the same, which they shall file with the clerk of the court transacting county business in the county said town may be located in, together with the list of officers elected by said association and a copy of the by-laws by them adopted.

When plat to be filed in office of clerk.

SEC. 6. Should said town not fall in a regularly organized county, then said plat shall be filed in the office of the clerk of the tribunal transacting county business of the county that may be organized to which said unorganized county may be attached.

Power to erect buildings.

SEC. 7. Said company shall have power to erect such buildings as they may deem best for the purpose of trade with or defence against the Indians.

This act to take effect and be in force from and after its passage.

CHAPTER 48.

An act incorporating the City of Lawrence, Kansas Territory.

§ 1. Boundaries of city.
2. Names of board of trustees.
§ 3. Powers conferred.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries of city.

SECTION 1. All that territory embraced within the following boundaries, to wit: Beginning at a stone monument in the mouth of a ravine entering the Kansas river in a northwesterly direction from the town of Lawrence, and between the dwelling houses of William H. R. Lykins and Achilles B. Wade, and running due west twelve hundred and fifty feet, thence due south sixty-seven hundred and twenty feet, thence due east fifty-two hundred and eighty feet, thence north forty-two hundred and sixty feet to the Kansas river, thence along said river to the place of beginning, shall be known and called the City of Lawrence, and by that name shall be known in law, may have perpetual succession, may sue and be sued, implead and be impleaded, defend and be defended, in all courts of law or equity within this territory or elsewhere, may have a common seal and the same may alter or change at pleasure, and shall have all the powers and privileges usually granted, or by any law of this territory given to incorporated bodies.

Names of the board of trustees.

SEC. 2. Samuel T. Snyder, John P. Wood, Joel Grover, William H. R. Lykins and George W. Hutchinson, or a majority of them, are hereby made and constituted a board of trustees for the organization and government of said city, with all the powers conferred on corporate bodies by any law now or hereafter to be in force within this territory, and such board of trustees shall have power to fill any vacancy that may occur in their board.

Powers conferred.

SEC. 3. All the powers, privileges, rights and provisions of an act passed at the present session of this legislative assembly, entitled "an act to incorporate the City of Leavenworth," be and the same are hereby conferred on the said City of Lawrence; and the said City of Lawrence is hereby authorized and empowered to proceed under the provisions of said charter as fully and absolutely as if the same had been in the same act specially applied to the said City of Lawrence.

This act to take effect and be in force from and after its passage.

CHAPTER 49.

An act to incorporate the Port William Town Company.

§ 1. Names of corporators.
2. May hold and enter by pre-emption, &c.
§ 3. May pass by-laws for election of officers, &c.
4. May fill vacancies.
5. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That William C. Remington, James G. Spratt, Henry D. Bard, James M. Bradly, Henry H. D. Herndon, William B. Almund, and their associates, are hereby constituted and declared a body politic and corporate by the name and style of the "Port William Town Company," and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in law or equity, in this territory; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs.

May hold and enter by pre-emption, &c.

Sec. 2. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land, where said town of Port William is now located, not to exceed one thousand acres, and to lay the same off into lots, parks, streets and avenues, and to sell, dispose of and convey the same.

May pass by-laws for election of officers, &c.

Sec. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged as other conveyances of real estate; when so signed and so acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

May fill vacancies.

Sec. 4. The above named persons shall have power to fill vacancies which may occur in their body by death, resignation or otherwise.

Stock deemed personal property.

Sec. 5. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and transferring of the said stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 50.

An act to incorporate the Doniphan Town Company.

§ 1. Names of corporators.	§ 3. May pass by-laws, &c.
2. Powers of the corporation.	4. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators

Section 1. John W. Foreman, Thomas H. Christopher, Patrick L. M. Loughlin, Sinclair R. Miller, Daniel Vanderslice, James F. Foreman, J. H. Crane and Felix Robidoux, their associates and successors, are hereby constituted and declared a body politic and corporate by the name and style of the Doniphan Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in all courts of law or equity in this territory; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs.

Powers of corporation.

Sec. 2. The corporation hereby created shall have power to purchase and hold, or to enter by pre-emption or otherwise, any quantity of land, where said town of Doniphan is now located, not to exceed six hundred and forty acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same.

May pass by-laws, &c.

Sec. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged as other conveyances of real estate, and when so signed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

Stock deemed personal property, &c

Sec. 4. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and transferring of stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 51.

An act to incorporate the town of Paola.

§ 1. Town of Paola as set forth in plat; powers.
2. Corporate powers, &c.
3. Board of trustees, authority of.
4. Names of the first board of trustees.
§ 5. May appoint constable, assessor, &c.
6. Powers of the president of the board.
7. Election for trustees, when held.
8. Power to levy and collect taxes.
9. To open streets, alleys, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Town of Paola, as set forth in plat.

Powers.

Section 1. All that tract of country which may be comprised within the limits of the town of Paola, in the county of Lykins, and set forth and defined in the plat of said town of Paola, shall be and the same is hereby incorporated into a town by the name of "Paola," and by that name shall be known in law, have perpetual succession, sue and be sued, implead and be impleaded, defend and be defended, in all courts of law and equity, and in all matters whatever; may grant, purchase, receive and hold property, real, personal and mixed, within said town; or may purchase or receive, by donation or otherwise, any amount of land within the limits of said town for the erection of a court-house, jail, or other public buildings, for the county of Lykins; and also any amount of land, anywhere within three miles of said town, necessary for the purpose of a burial ground; and may, in the same name, do all acts as natural persons; may have a common seal, and may alter or change the same at pleasure.

Corporate powers, &c.

Sec. 2. The corporate powers and authority of said town of Paola are hereby vested in a board of trustees, to be called "the board of trustees of the town of Paola."

Board of trustees.

Sec. 3. The board of trustees shall consist of five members, and shall have authority to pass all ordinances of every nature necessary for the good of the town, and not inconsistent with the constitution and laws of the United States or the laws of this territory.

Names of first board of trustees.

Sec. 4. William A. Heiskell, Isaac Jacobs, Willian H. Lebow, B. P. Campbell and Peter Potts are hereby made and constituted the first board of trustees for the said town of Paola; and such board shall meet at such time and place as they may agree upon, and shall select one of their number as president of the board, and shall also select a clerk of the board.

May appoint town constable, &c.

Sec. 5. The board of trustees may appoint a town constable, assessor, collector, treasurer, and such other agents and officers as they may deem necessary; and they shall provide for the pay of such officers and agents, and prescribe their powers and duties.

Powers of the president of the board.

Sec. 6. The president of the board of trustees shall have all the powers and privileges of a justice of the peace, within the corporate limits of said town of Paola, in all matters arising under the ordinances of said town, and he shall do and perform all duties under and by virtue of any ordinance which may be prescribed by said board of trustees; *provided*, that in case of vacancy or absence of such president of the board, any justice of the peace shall have and possess all the judicial powers of said president under any such ordinance; and such president shall receive the same fees as a justice of the peace for similar services.

Election for trustees, when held.

Sec. 7. There shall be held, on the first Monday of December, *anno Domini* eighteen hundred and fifty-six, and on the first Monday of December every year thereafter, at the court-house in said town of Paola, an election for five trustees, and the persons having the highest number of votes shall be declared elected; and such election shall be conducted and such trustees shall be qualified in such manner as may be prescribed by ordinance, and all ties may be decided and all vacancies filled in such manner as may be prescribed by ordinance.

Power to levy and collect taxes, &c.

Sec. 8. The board of trustees shall have power, by ordinance, to levy and collect a tax on all lawful subjects of taxation not exceeding one-fourth of one per centum; to remove and prevent nuisances; to prevent and restrain bawdy houses, gambling houses and other disorderly houses; to restrain and prevent gambling; to regulate or prohibit tippling-houses, dram-shops, ten-pin alleys or other gambling devices; to regulate circuses, shows or other theatrical amusements; to restrain and prevent the meeting of slaves; to protect property from fires; to prevent the introduction and spread of diseases, and by ordinance to do all other things that may be necessary and lawful for the well-being of said town.

To open streets.

Sec. 9. The board of trustees shall have power to open and put in repair all streets and alleys in said town.

This act to take effect and be in force from and after its passage.

CHAPTER 52.

An act to incorporate the town of Alexandria.

§ 1. Names of corporators; authority.
2. Powers of corporation.
3. May pass by-laws, &c.
§ 4. May prescribe rules for the transfer of stock.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. Alexander Majors, Samual D. Pitcher, Archibald Payne, James M. Alexander, E. Sibley, William H. Russel, their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Alexandria Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to attest [alter] the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

Sec. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, where the town of Alexandria is now located, not to exceed six hundred and forty acres, and to lay off the same into parks, squares, blocks and lots, and to sell and dispose of and convey the same by deed.

May pass by-laws, &c.

Sec. 3. The said company shall have power to pass by-laws for the election of such officers, at such time or times as may be necessary to carry out the business of the company, and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by by-laws designate, and when so signed, with the corporate seal established, shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

May prescribe rules for transfer of stock.

Sec. 4. The said company may by by-laws prescribe rules for the transfer of the stock of said company by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 53.

An act to incorporate the Town of Indianola.

§ 1. Names of corporators; authority.
2. Powers of corporation.
§ 3. May pass by-laws, &c.
4. May prescribe rules for transfer of stock

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. E. S. Sibley, John S. Baker, William Alley, George H. Perrin, B. T. Card, H. D. McMeckin, R. T. Drum, their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Indianola Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to attest [alter] the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, where the town of Indianola is now located, not to exceed six hundred and forty acres, and to lay off the same into parks, squares and blocks, and lots, and to sell, and dispose of and convey the same by deed.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of real estate of the company shall be signed by such officers as the said company may by by-laws designate, and when so signed, with the corporate seal attached, shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

May prescribe rules for transfer of stock.

SEC. 4. The said company may by by-laws prescribe rules for the transfer of the stock of said company by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 54.

An act to incorporate the Paola Town Company.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
§ 3. May pass by-laws, &c.
4. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. Baptiste Peoria, Isaac Jacobs, A. M. Coffey and David Lykins, their associates and successors, are hereby constituted and declared a body politic and corporate by the name and style of "the Paola Town Company," and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in all courts of laws and equity in this territory; said company is authorized to have and use a common seal and to alter the same at pleasure, and make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs.

Names of corporators.

Authority.

SEC. 2. The corporation hereby created shall have power to purchase and hold, to enter by pre-emption, or otherwise acquire title to any quantity of land, not to exceed six hundred and forty acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same.

Powers of corporation.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged as other conveyances of real estate, and when so signed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts of law or equity in this territory or elsewhere.

May pass by-laws, &c.

SEC. 4. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the using and transferring the said stock by each individual stockholder.

Stock deemed personal property.

This act to take effect and be in force from and after its passage.

CHAPTER 55.

An act to incorporate the Kansas, Nebraska and Utah Stage Company.

§ 1. Names of corporators; powers.
2. May enact by-laws, &c.
3. Objects of the corporation.
4. Capital stock, how much.
5. Affairs, how managed.
6. Directors to have control.
§ 7. Subscription may be collected by suit.
8. When stockholders not permitted to transfer.
9. Stock deemed personal property.
10. Names of the first board of directors.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That William M. F. Magraw, Samuel H. Woodson, Frederick Emery, M. W. McGee, William Ligget, Isaac Hockaday, Francis J. Marshall, and such other persons as may become associated with them as hereinafter provided, shall be and they are hereby incorporated a body corporate and politic by the name and style of "the Kansas, Nebraska and Utah Stage Company," and by such name may sue and be sued, plead and be impleaded, in all courts of law and equity within this territory, and may contract and be contracted with as natural persons.

Powers.

May enact by-laws, &c.

SEC. 2. The said corporation shall have a common seal and change or alter the same at pleasure; may enact by-laws for their government; employ agents, fix their compensation, and prescribe their duties, and generally do all things incident to an incorporated body.

Objects of corporation.

SEC. 3. The objects of this incorporation are declared to eb the transportation of the United States mail, passengers, baggage, &c., over the mail routes in said territories of Kansas, Nebraska and Utah, and the holding, improving and disposing of such lands or other property as may be acquired of the United States, by gift, grant, purchase or otherwise, not to exceed six hundred and forty acres of land in one body; and they and their successors, as a body corporate by the aforesaid name and style, shall be competent and capable of purchasing not more than six hundred and forty acres of land in any one body, receiving by gift, grant or devise, holding, improving, mortgaging and conveying any property or estate, real, personal or mixed.

Capital stock of said corporation

SEC. 4. The capital stock of said corporation shall be fifty thousand dollars, with the privilege of increasing the same by a vote of two-thirds of the stockholders, to be divided into shares of one hundred dollars each; each share entitling the holder thereof to one vote, either in person or by proxy, in the election of the board of directors.

SEC. 5. The affairs of this corporation shall be managed by five directors, chosen by the stockholders annually on the first day of May of each year, and the directors, when elected, shall choose a president from their number, who shall preside in all meetings, and the directors shall hold their offices for one year and until their successors are duly elected and qualified.

Affairs, how managed.

SEC. 6. The directors shall have the general control and management of the business of the incorporation, and shall cause to be kept proper books of record and account, in which shall be regularly entered all the transactions of the company, and which said books shall always be open to the inspection of any stockholder or creditor of said company.

Directors to have control.

SEC. 7. All subscriptions of stock in said company shall be collected by suit in the name of this corporation before any court of competent jurisdiction.

Subscriptions may be collected by suit.

SEC. 8. No stockholder who shall be indebted to the incorporation shall be permitted to transfer or assign stock, or receive a dividend, until such debt is paid or secured to the satisfaction of the directors.

Stockholder not permitted to transfer, when.

SEC. 9. The stock of this corporation shall be deemed personal property, and shall be assignable on the books of said corporation according to such rules and regulations as the directors may establish.

Stock deemed personal property.

SEC. 10. Until the first election, the following persons are appointed directors of said incorporation, to wit: William M. F. Magraw, William Ligget, Isaac Hockaday, Frederick Emery, F. J. Marshall, M. W. McGee.

Names of the first directors.

This act to take effect and be in force from and after its passage.

CHAPTER 56.

An act to incorporate the Historical and Philosophical Society of Kansas Territory.

§ 1. Names of corporators; powers of.

§ 2. What number constitute a quorum; of officers, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That William Walker, D. A. N. Grover, David Lykins, John Donaldson, James Kuykendall, Thomas Johnson, William A. M. Vaughan, Lucien J. Eastin and A. J. Isaacs,

Names of corporators.

and their associates, be and they are hereby constituted a body corporate and politic by the name and style of the "Historical and Philosophical Society of Kansas Territory," and by that name they and their successors in office shall be and they are hereby made capable in law to contract and be contracted with, sue and be sued, plead and be impleaded, prosecute and defend, answer and be answered, in any court of record in this territory or elsewhere; and to hold any estate, real or personal, or mixed, and the same to grant, sell, lease, mortgage or otherwise dispose of for the benefit of said society; and to receive donations, to be applied as the donors may direct; and to devise and to keep a common seal; and to make and enforce any by-laws not contrary to the constitution and laws of the United States or this territory, and to enjoy all the privileges and franchises incident to a corporation; and that the property which the aforesaid named society may be allowed to hold shall not exceed five thousand dollars.

Powers of.

What number constitue a quorum.

Officers.

SEC. 2. That any seven members of said society may at any meeting constitute a quorum to do business, and shall, within one year from and after the passage of this act, organize, and, under such regulations as they may adopt, elect a president, two vice presidents, a recording secretary, and a corresponding secretary. Said officers shall hold their offices, respectively, for three years; their respective duties to be defined by such regulations and by-laws as may be adopted at any regular meeting of the society. The regular meetings of said society shall take place on the second Monday succeeding the annual meeting of the legislative assembly of the territory of Kansas, at the seat of government; and the object of said society shall be the collection and preservation of the library, mineralogical and geological specimens, historical matter relating to the history of this territory, Indian curiosities and antiquities, and other matters connected with and calculated to illustrate and perpetuate the history and settlement of our territory.

This act to take effect and be in force from and after its passage.

CHAPTER 57.

An act to incorporate the Kansas River Bridge Company.

§ 1. Exclusive right to build a bridge across Kaw river.
2. Authority to form a company; capital stock.
§ 3. Rates of toll, how governed.
4. When this act to be void.
5. Not to conflict with Lecompton Bridge Company.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Exclusive right to build a bridge across Kaw river.

SECTION 1. The exclusive right and privilege of building and maintaining a bridge across the Kansas (or Kaw) river, at or within five miles of the village of Tecumseh, is hereby granted for the period of twenty-one years, to Edward Hoogland, Thomas N. Stinson, John T. Brady, Hiram J. Strickler, L. B. Statler, and H. N. Watts or their assigns, or such persons as may be associated with them for that purpose.

Authority to form a company.

SEC. 2. Said Hoogland and the other persons named in the foregoing section, or a majority of them, are hereby authorized to form a company, to be known as the "Kansas River Bridge Company," the capital stock of which shall be one hundred thousand dollars, to be divided into shares of one hundred dollars each, and shall have power to prescribe by-laws for the regulation of said company, receive and collect subscriptions to such capital stock, establish and collect tolls for crossing said bridge, sue and be sued, hold and convey real estate, so much as may be necessary for the construction of said bridge, and do all other acts and things, and exercise all the rights and privileges generally appertaining to corporations.

Capital stock.

Rates of toll on said bridge, how governed.

SEC. 3. The rates of toll on said bridge shall not exceed the average of the rates on the several ferries across said river, established by law, nor shall said bridge be so constructed as to prevent the navigation of said river by steamboats.

When act to be void.

SEC. 4. Unless this bridge be built within three years, this act shall be void.

Not to conflict with Lecompton Bridge Co.

SEC. 5. No privilege granted in this act shall be so construed as to conflict with any of the rights and privileges of the Lecompton Bridge Company by the present legislative assembly.

This act to take effect and be in force from and after its passage.

CHAPTER 58.

An act to incorporate the Territorial Agricultural Society.

§ 1. Kansas Territorial Agricultural Society; powers of; by-laws, &c.
2. Powers of the corporation.
3. Annual meetings, when held.
4. Under the control of certain officers; term of office.
5. Names of officers for first year; duties.
6. Who are members.
§ 7. Society to determine in what manner awards may be made, &c.
8. Duty of recording secretary.
9. Of compensation.
10. Powers of the society.
11. May establish branch societies.
12. President may appoint branch, when.
13. In case of vacancy, who shall fill it.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Kansas Territorial Agricultural Society.

SECTION 1. There is hereby established and incorporated a society to be known and designated by the name and style of the "Kansas Territorial Agricultural Society," and by that name and style shall have perpetual succession, and by that name shall have power to contract and be contracted with, to sue and be sued, to plead and be impleaded in all courts, answer and be answered unto, defend and be defended in all courts and places, and in all matters whatsoever; and shall in like manner have authority to have and use a common seal, and the same at pleasure to change and alter; and may also make, ordain and establish, and put in execution such by-laws, ordinances, rules and regulations as shall be proper and necessary for the good government of said society, and the prudent and efficient management of its affairs; *provided*, that said by-laws, ordinances, rules and regulations shall not be contrary to the provisions of this charter, nor to the laws of this territory or the laws and constitution of the United States.

Powers of.

By-laws.

Powers of the corporation.

SEC. 2. In addition to the powers above enumerated, the society shall, by its name and style aforesaid, have power to purchase and hold any quantity of land not exceeding twenty acres, and may sell and dispose of the same at pleasure; the said real estate shall be held by said society for the sole purpose of erecting enclosures, buildings and other improvements calculated and designed for the meeting of the society, and for an exhibition of various breeds of horses, cattle, mules and other stock, and of agricultural, mechanical and domestic manufactures and productions, and for no other purpose; and if from any cause said society shall be dissolved or fail to meet within a period of five consecutive years, then the real estate held by it, together with all buildings and appurtenances belonging to said real estate, shall be sold as lands are now sold under execution, and the proceeds deposited in the territorial treasury, subject to the control of the legislative assembly.

Annual meeting, when held.

SEC. 3. An annual meeting of the members of the society shall be held on the first Monday in October, annually, at such place as the said society shall determine upon at its first meeting.

Under the control of president and vice president of each district.

SEC. 4. The fiscal, presidential, and concerns of the society shall be under the control and management of a president and one vice president for each judicial district in the territory, a secretary, corresponding secretary and a treasurer, to be styled a board of directors, who shall be elected at the annual meeting of the members of the society; they shall hold their offices for one year and until their successors are duly chosen, and shall have power to fill all vacancies that may occur in said board.

Term of office.

Names of officers, for first year.

SEC. 5. For the purpose of carrying into effect this act, A. M. Coffey, of the county of Lykins, shall be the first president; William M. Tebbs, of the county of Jefferson, Joel Hyatt, of the county of Leavenworth, and Thomas Stinson, of the county of Shawnee, shall be the first vice presidents; Samuel A. Williams, of the county of Bourbon, shall be the first secretary; James Finley shall be the first corresponding secretary, and John W. Forman, of the county of Doniphan, shall be the first treasurer; who shall call the first meeting of the society, at the seat of government of the territory, at such time as they may agree upon, and at such first meeting any three members of the board shall constitute a quorum to do business, and each member of such board is hereby authorized to solicit and receive subscriptions to said society as hereinafter specified.

Duties.

Who are members.

SEC. 6. The members of this society shall consist of such persons as shall pay annually, into the treasury thereof, the sum of one dollar; and such persons shall be members only for the year for which they shall have thus paid the amount aforesaid; *provided*, that at any annual meeting the society may, by a majority vote, increase the amount necessary for membership to any sum not exceeding six dollars per year.

Society to determine in what manner awards shall be made, &c.

SEC. 7. The members of the society, by a majority of the votes present, shall determine in what amount and on what subjects the funds of the society shall be awarded as premiums at the exhibition succeeding their meeting, of which notice shall be given in some newspaper printed in or nearest their place of meeting, and in such other papers as advisable.

Duty of recording secretary.

SEC. 8. It shall be the duty of the recording secretary to deposit annually in the office of auditor of public accounts a statement of the annual expenditures of the society.

Of compensation.

Sec. 9. No compensation shall be allowed to any officer of this society for his services, except to the corresponding and recording secretaries, nor to them until the board of directors shall so order, except for actual expenses paid out.

Powers of society.

Sec. 10. The society may, by a majority of the voters at any annual meeting, prescribe the duties of and require bond and security from any of its officers.

May establish branches.

Sec. 11. This society, at any annual meeting, may establish a branch society in any county in the territory, which, when organized by appointment of a president, three directors, recording secretary, corresponding secretary and treasurer, shall possess all the powers and privileges of this society.

President may appoint a branch.

Sec. 12. The president of this society may, at any time in vacation of the meetings, appoint such branch society, and appoint the officers thereof, until the first annual meeting of this society. This society shall not forfeit this charter on account of not meeting as provided in this act; *provided*, the same shall meet and organize within twelve years from this date.

In case of vacancy, who may appoint.

Sec. 13. In case of a failure or inability to serve of any of the persons mentioned in the fifth section of this act, the governor is hereby authorized to appoint some suitable person or persons to fill the vacancy or vacancies thus occasioned; and the persons herein named, as those above mentioned, shall not be required [to pay] their subscription before they shall have authority to act in the organization of this society.

This act to take effect and be in force from and after its passage.

CHAPTER 59.

An act to incorporate the Leavenworth Jail Association.

§ 1. Names of corporators.
2. Capital stock of company.
§ 3. May open books for stock, &c.
4. To hold meetings; how often.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. Samuel D. Pitcher, J. Harvey Day, Isaac Vanvegton, Lewis N. Rees, Westcott D. Mitchler, and their associates and successors, are hereby created a body corporate by the name and style of the Leavenworth Jail Association, and by that name shall have perpetual succession, and may sue and be sued, implead and be impleaded, in any court having competent jurisdiction; may hold such real and personal estate in the city of Leavenworth, Kansas territory, as may be necessary for the objects of this corporation; they may sell and dispose of the same, and convey by deed or otherwise at pleasure; and may contract and be contracted with, and in all things may act in their corporate name, in the erecting, keeping in repair, renting, or otherwise carefully using a prison and prison grounds in the said city of Leavenworth, with the privilege of increasing the size thereof, or adding thereto at pleasure.

Capital stock of company.

SEC. 2. The capital stock of said company shall not exceed ten thousand dollars, and shall be divided into shares of fifty dollars each; and the affairs of the company shall be managed by three directors, who shall be stockholders, and be chosen annually by the stockholders, in such manner as they shall direct.

May open books for stock, &c.

SEC. 3. Said company may open books for stock, for any amount not exceeding their capital stock, at such times and places as the stockholders may prescribe.

To hold meeting, how often.

SEC. 4. The company shall hold a meeting once every three months, or oftener if deemed necessary, but no failure to meet shall operate as a forfeiture of any rights under this charter.

This act to take effect and be in force from and after its passage.

CHAPTER 60.

An act to incorporate the City of Leavenworth, Kansas Territory.

§ 1. Bounds of the city.
2. Corporate powers.
3. Board of councilmen.
4. How chosen.
5. To elect a president.
6. Stated meetings.
7. Mayor; how elected.
8. Qualification.
9. Powers and duties of mayor.
10. Vacancy; who to act.
11. Powers of mayor and council; proviso.
12. Powers, &c.
13. Duty of mayor.
14. Style of ordinance.
15. Shall appoint city register.
16. Oath of office, &c.
§ 17. Shall appoint marshal.
18. Land sold for tax may be redeemed.
19. Statement of city affairs to be published.
20. Fees.
21. Fire companies.
22. Exclusive jurisdiction; when.
23. Transcript to be given.
24. Exempt from working roads.
25. Mayor authorized to administer oaths, &c.
26. Authority of mayor and marshal.
27. Officers guilty of violation; how punished.
28. Ordinances proved.
29. Public act.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Bounds of the city of Leavenworth.

SECTION 1. All that district of country, described as follows, to wit: Beginning at the point in the Missouri river, in the middle of the main channel, opposite to where the southern line of the United States military reserve around Fort Leavenworth strikes the Missouri river, running thence a westerly course with the southern line of said reserve, three-fourths of a mile; thence a southerly course, at right angles with the last mentioned line, one mile and a half; thence easterly, parallel with the first mentioned line, to the middle of the main channel of the Missouri river; thence northerly, up said Missouri river, in the middle of the main channel thereof, to the place of beginning, is hereby erected into a city by the name of the City of Leavenworth, and the inhabitants thereof are hereby constituted a body corporate and politic by the name and style of the City of Leavenworth, and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatsoever; may contract and be contracted with, may purchase, receive and hold property, both real and personal, within said city, and may sell, lease or otherwise dispose of the same for the benefit of the city; may purchase, receive and hold property, real, personal and mixed, beyond the limits of the city, to be used for the burial of the dead, for the erection of water-works to supply the city with water, for the establishment of a hospital for the reception of persons afflicted with contagious or other diseases, or for the erection of a poorhouse and farm, or workhouse, or house of correction, or for any other purpose which may tend to the general good of the city, and may erect buildings or other improvements for the purposes aforesaid, and may sell, lease or otherwise dispose of such property for the benefit of such city, and may do all other acts as natural persons, and may have a common seal and change the same at pleasure.

Corporate powers.

SEC. 2. The corporate powers and duties of said city shall be vested in a mayor and board of councilmen, who shall be chosen as hereinafter directed.

Board of councilmen.

SEC. 3. The board of councilmen shall consist of nine members, for the election of whom the city shall be divided into convenient wards by ordinance, which wards may be altered from time to time, or new ones created, as the convenience of the inhabitants may require, and the councilmen shall be apportioned among the several wards in proportion to the number of qualified voters in each; but in the election of the first board of councilmen, the whole city shall vote for nine councilmen by general ticket.

How chosen.

SEC. 4. The councilmen shall be chosen by the qualified voters of their respective wards, shall serve for the term of one year and until their successors are elected and qualified; shall be at least twenty-one years of age, citizens of the United States, and shall have resided in said city for at least sixty days next preceding their election; and whenever there shall be a tie in the election of councilmen, it shall be determined by the judges of the election in the ward in which it shall happen, by lot, and all vacancies shall be filled by election as aforesaid, in such manner as shall be provided by ordinance; *provided*, that until otherwise provided, in case of vacancy, the mayor shall issue his proclamation ordering an election, prescribing the time, place and manner of holding such election.

To elect a president.

SEC. 5. The board of councilmen shall elect their president and all other officers, agents and servants of their board; shall judge of the qualifications, elections and returns of their own members; a majority of the whole number shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as the board may provide; they may determine the rules and regulations of their proceedings, punish their members for disorderly conduct, and, by a concurrence of two-thirds of their whole number, expel a member, but not a second time for the same offence; and they shall at any time, upon the request of any member, cause the yeas and nays to be called and entered upon the journal.

Stated meetings.

SEC. 6. The board of councilmen shall hold their stated meetings on such days and times as shall be fixed by ordinance; but there shall not be exceeding six regular meetings in any one year, and they may adjourn their stated and other meetings from time to time, and may by ordinance change the times of holding their regular meetings.

Mayor, how elected.

SEC. 7. The mayor shall be elected by the qualified electors of the city, shall hold his office for the term of one year and until his successor is duly elected and qualified; and when two or more persons shall have an equal number of votes for mayor, the election shall be determined by the board of councilmen by lot.

Qualification.

SEC. 8. The mayor shall be at least twenty-one years of age, a citizen of the United States, shall have resided in the city at least three months next preceding his election, and be otherwise qualified as required in case of councilmen.

Powers and duties of the mayor.

SEC. 9. The mayor, by and with the advice and consent of the board of councilmen, shall have power to fill all offices within the city which are not ordered by law or ordinance to be elected or otherwise appointed. The mayor shall take care that the laws of the territory and the ordinances of the corporation are duly enforced, respected and observed within the limits of said city. He shall have power, with the consent of the board of councilmen, to remove from office any person holding office created by ordinance, to remit fines and forfeitures, to grant reprieves and pardons; he shall be a conservator of the peace within the city and within the county in which said city is located; he shall have power to fill all vacancies which may happen in any office (other than that of councilman), until the end of the session of the board of councilmen, which shall occur next after such vacancy; he shall from time to time give to the board of councilmen information relative to the situation of the affairs of the city; and shall recommend to their consideration such measures as he shall deem expedient for the welfare of the city; he may, on extraordinary occasions, convene the board of councilmen by proclamation, stating to them when assembled the object for which they were convened; and shall have power, whenever he deems it necessary, to require any officer of the city to exhibit his accounts, books or other papers, and to make report in writing to the mayor and board of councilmen, touching any subject or matter pertaining to his office.

Vacancy, who shall act.

Sec. 10. When any vacancy shall happen in the office of mayor by death, resignation, absence from the city, removal from office, refusal to qualify or otherwise, or when the mayor shall be party interested, or put upon his trial for any violation of law or ordinance, the president of the board of councilmen, for the time being, shall exercise the office of mayor until such vacancy shall be filled or such disability be removed, or, in case of temporary absence, until the mayor shall return, and during the time he shall receive the same compensation as the mayor would have been entitled to; and in case of such vacancy other than a temporary absence or disability, the person exercising the office of mayor shall cause a new election to be had, giving ten days' notice thereof by proclamation.

Powers of mayor and councilmen.

Sec. 11. The mayor and board of councilmen shall have power by ordinance to levy and collect taxes, not exceeding one-half one per centum, upon real and personal property within the city, and upon all possessory rights or claims to any lots, lands, or other property within the city, and upon property, lands, lots, interests or shares held, owned or claimed by any person or persons, company, firm, association or corporate body, whether the title of the United States thereto be extinguished or not, upon the assessed value thereof, and all moneys on hand or on deposit, bills of exchange, bonds, notes and other securities held upon solvent persons or corporations, over and above the just debts or liabilities of the owner or holder thereof; to levy and collect a poll tax, not exceeding one dollar per annum, upon every free male person over twenty-one and under fifty-five years of age;

to levy and collect a tax on dogs, not exceeding five dollars each per annum, and to provide for the granting of licenses for the keeping of dogs within the city, if deemed proper; to prevent and remove nuisances; to establish night watches and patrols; erect lamps in the streets and light the same; to provide for licensing, taxing and regulating auctioneers, merchants, grocers, confectioners, taverns, bankers, peddlers, brokers, dram-shop keepers, liquor sellers, pawnbrokers, ordinaries, shows and exhibitors for pay, billiard tables, ball and ten-pin alleys, (or any number of pins the same may have,) hacks, drays, wagons or other vehicles used within the city for pay, theatres, theatrical exhibitions for pay; to restrain, prohibit or suppress tippling-houses, dram-shops, and the sale of spirituous liquors, ball and ten-pin alleys, gaming and gaming houses, bawdy and other disorderly houses, and all kinds of public indecencies; to prevent riot and disturbances of citizens; to prevent the assembling of slaves; to prevent the discharge of fire-arms, the unnecessary rapid riding or driving of any horse, mule or other animal; to establish and regulate markets; to open, alter, clean, grade, pave and keep in repair streets, sidewalks, alleys, avenues, lanes, drains and levees; to supply the city with water; to provide for regulating and keeping standard weights and measures for the use of the city; to regulate the cleaning of chimneys, and fix the fees therefor; to provide for preventing and extinguishing fires; to regulate the size of brick to be made and used in the city; to provide for the inspection of all kinds of produce, provisions, fuel, lumber and other materials for building, and to define the weight and measure thereof if sold or offered for sale in the city; to regulate the storage of gunpowder and other combustible materials; to regulate and order the building of parapet walls and partition fences; to erect pumps in the streets and other places for the convenience of the inhabitants; to provide for taking the census of the city; to provide for the election of city officers and their compensation; for deciding contested elections; for removing officers of the city for misconduct, and for the appointment of officers not provided for in this charter, and fixing the duties and compensation of the same; to provide for the construction and repair of sidewalks, and for curbing and cleansing the same, at the expense of the owners, occupants or claimants of the ground or lot fronting thereon, and in default of payment of the same and costs [to sell the property assessed]; to regulate, restrain and prevent the erection of wooden buildings in any part of the city, and to regulate and prevent the carrying on of manufactures dangerous in causing or producing fires; to make regulations to secure the general health of the city; to prevent the introduction or spread of contagious or infectious diseases, and to make quarantine laws for this purpose, and to enforce the same within five miles of the city; to erect, establish and regulate hospitals, workhouses, poorhouses, and all other necessary buildings for the use of the city, and provide for the government and support of the same; to borrow money on the credit of the city, and to issue the bonds of the city for money due or to become due; to appropriate money, and to provide for the payment of the debts of the city; to provide for the improvement of public roads and highways leading into and out of the city, within four miles of the the centre of the city; to impose fines, penalties and forfeitures on the owners and masters of slaves suffered to go at large upon the hiring of their own time, or to act or deal as free persons, and to tax, restrain, regulate and prescribe the terms upon which free negroes and mulattoes shall be permitted to reside within the city; to regulate the police of the city, and to impose fines, forfeitures and penalties for the breach of any ordinance, and also for the recovery and collection of the same, and, in default of payment, to provide for confinement in the city prison or workhouse, or at labor on the streets, or both; to pass all ordinances that may become necessary to carry provisions of this charter into effect, and also to pass any ordinance usual or necessary for the well-being of the inhabitants, and to pass and to provide for the enforcement of any and all ordinances which may be deemed right and proper, not inconsistent with the constitution of the United States and the organic act of Kansas territory: *Provided*, that nothing herein contained shall be so construed as to authorize the passage of any ordinance which shall tax the wearing apparel, necessary tools or implements of any person used in carrying on his trade, or the books or drugs of any professional man necessarily used in the exercise of his profession, or the imposition of any tax upon the government of the United States or the territory of Kansas, or the laying of any tax upon any exhibitions which are purely literary or artistic; nor shall any thing be subject to sale or distress for taxation, or for the payment of any penalty or costs, which may not for the time being be subject to sale under execution by the then existing laws of Kansas territory.

Proviso

Powers

SEC. 12. The mayor and councilmen shall have power to extend, open and widen any street, avenue, alley or lane, at their discretion, at any place within the city, and to create or open any new street, avenue, alley or lane, at their discretion, at any place in said city; making, however, the person or persons whose property may be injured thereby, adequate compensation therefor, to be determined by the assessment of five disinterested householders of Kansas territory, not residents of the city, who shall be selected and compensated as may be prescribed by ordinance, and who shall, in the discharge of their duties, act under oath faithfully and impartially to make the assessment to them submitted, considering the benefit resulting from as well as the loss sustained by the owner of the property.

Duty of mayor.

SEC. 13. Any ordinance passed by the board of councilmen shall, before it becomes a law, be presented to the mayor for his approval; if he approves it, he shall sign it under his endorsement of approval; if not, he shall return it with his objections to the board, who shall reconsider the same, and if, notwithstanding the objections of the mayor, [it shall be passed] by a majority of the whole number of councilmen, it shall become a law; and in all such cases the yeas and nays shall be entered on the journal; and if any ordinance presented to the mayor for his approval shall not be returned to the board within three days after it has been delivered to the mayor, the same shall become a law as fully as if he had signed it.

Style of ordinance.

SEC. 14. The style of all ordinances shall be, "Be it ordained by the mayor and councilmen of the city of Leavenworth;" and all ordinances shall, within one month after they are passed, be published in some newspaper printed within the city, or by ten written or printed handbills, posted up at as many public places, or in pamphlet form, to be distributed or sold as may be provided for by ordinance; *provided*, however, that the failure to publish any ordinance, as herein prescribed, shall not render void such ordinance.

Shall appoint a city register.

SEC. 15. The mayor and councilmen shall appoint a city register, who shall hold his office for one year and until his successor is appointed and qualified, unless sooner removed, who shall give bond with sufficient security, to be approved by the mayor, in such sum as may be prescribed by ordinance, conditioned for the faithful discharge of the duties of his office; he shall perform all the duties of clerk of the board of councilmen, shall keep a book or books wherein shall be entered all the proceedings of the board and all the records of the city, which books shall at all proper times be open for the inspection of the citizens; and he shall have and preserve in his office all records, public papers and documents belonging to the city, and shall perform such other duties as may be enjoined on him by ordinance; he shall also be the keeper of the seal of the city, and affix it to all papers and documents as may be required by ordinance; *provided*, he may perform all or any of his duties by deputy by him duly appointed, which appointment shall be approved by the mayor before it is perfected; and all acts done by such deputy shall be in the name of his principal, and such register shall be responsible for all the acts of his deputy.

Oath of office.

SEC. 16. The mayor, councilmen and all other city officers shall, before entering upon the discharge of the duties of their several offices, take and subscribe an oath before some judge, justice of the peace, clerk, or other officer authorized to administer oaths, to support the constitution of the United States, and to support and maintain the provisions of the act organizing the territory of Kansas, and faithfully to discharge the duties of his office.

Shall appoint a marshal.

SEC. 17. The mayor and board of councilmen shall appoint a marshal, who shall hold his office for one year and until his successor shall be appointed and qualified, who shall, possess the same qualification as other city officers; who shall, before entering upon the discharge of the duties of his office, enter into bond to the city of Leavenworth in such penalty and with such security as may be prescribed by ordinance, or such as may be required by the mayor, conditioned that he will faithfully account for all moneys which may come to his hands by virtue of his office, and faithfully discharge all the duties of his office as such marshal, which bond shall be filed and recorded in the office of the city register; which said marshal shall execute all writs and process to him directed by the mayor or any justice of the peace, or other judicial officer, and return the same according to the commands of such writs and process, within the limits of the city; and he shall be collector of the city revenue, and he shall perform all such duties as may be prescribed by ordinance, and shall also possess all the powers and duties of a constable, and he shall be entitled to the same fees as the constable of a township may be entitled to by the laws of the territory: *Provided*, all writs in the hands of said marshal, for the arrest of any person for any offence against the city ordinances or against the laws of the land, may be executed in any part of the county in which the city of Leavenworth is situated.

Land sold for tax may be redeemed.

SEC. 18. When any real estate, or possessory right or claim to any lot or land, shall be sold for taxes, the owner thereof may redeem the same at any time within two years by paying to the purchaser the full amount of the purchase money and all taxes subsequently paid thereon, and all costs and charges thereon, together with twenty per centum per annum on the same.

Statement of city affairs to be published.

SEC. 19. The mayor shall publish or cause to be published, on the first day of March in each year, a full and complete statement of all moneys received and expended for the past year, and on what acount received and expended, which statement shall be inserted for three successive weeks in some newspaper published in the city, or by ten written or printed handbills set up at as many public places.

SEC. 20. The mayor, councilmen and other officers of the city shall receive such compensation or fees for their services as shall be provided by ordinance. Fees.

SEC. 21. The mayor and board of councilmen shall have power to organize and establish fire companies in the city, and to pass ordinances governing and controlling the same, and the members of such companies shall be exempt from military duty in time of peace, and from serving on juries. Fire companies.

SEC. 22. The mayor shall have exclusive original jurisdiction of all cases arising under this act, and under all the ordinances of this city; he shall also have concurrent jurisdiction with each and every justice of the peace, and shall have all the powers, rights, privileges, jurisdiction and immunities, and be subject to all the duties of a justice of the peace both in civil and criminal cases arising under the laws of the United States or the laws of the territory, within the corporate limits of the city of Leavenworth, subject to appeal or *certiorari*, as allowed from justices' courts by the laws of the territory, and the mayor shall receive the same fees as are or may be allowed to justices of the peace; he shall have the power to issue writs or executions directed to the marshal or any constable, and shall hold a regular court at such times as he may designate once in each month, and for the transaction of business arising under the city ordinances shall hold a court whenever occasion may require. Exclusive original jurisdiction.

SEC. 23. The mayor, on demand of any person in whose favor he shall have rendered judgment, shall give to such person a certified transscript of such judgment, and the clerk of the district court, upon application, shall file and record in his book of judgments such transcripts, and note the date of such filing in the office of the clerk of the district court, which shall be a lien upon all real estate of the defendant in such judgment, throughout the county in which the city of Leavenworth is situated, to the same extent and with the same effect as a judgment of the said district court, and shall be equally under the control of said district court, may be renewed by *scire facias*, and carried into execution in the same manner and with the like effect as the judgments of said district court, and executions issued thereon may be directed to and executed in any county in the territory. Transcript of judgment to be given.

SEC. 24. The citizens of the city of Leavenworth shall be exempt from working on any road beyond the city limits, and from paying a road tax for the construction or repair of roads without the city limits. Exempt from working roads.

Mayor authorized to administer oaths, &c., &c.

SEC. 25. At the first meeting of the city council after any general election, the board of councilmen shall cause to be made out and certified by the register the election and qualification of the mayor, and within ten days thereafter he shall cause [the same] to be recorded in the recorder's office of the county in which the city is situated; a neglect to qualify and to record as aforesaid shall be deemed a refusal to accept: and the mayor shall be authorized to administer oaths, to take depositions and the acknowledgment of deeds, mortgages, and other instruments of writing affecting the titles of lands in the territory, and certify the same under the seal of the city, which shall be received as good and valid throughout the territory.

Authority of mayor and marshal.

SEC. 26. The mayor and marshal are hereby authorized to call on every male inhabitant over the age of twenty-one years, to aid in enforcing the laws and ordinances, and in case of riot, to call out the militia to aid them in suppressing the same or carring into effect any law or ordinance; and any person who shall not obey such call shall forfeit to the city a fine not exceeding five hundred dollars.

Officer guilty of violation, how punished.

SEC. 27. Any officer of the city who shall be guilty of any wilful or corrupt violation of duty, or omission to discharge his duty, or any flagrant misdemeanor, may be impeached and tried by the city council, and removed from office by a majority of all the members of the board.

Ordinances proved by certificate.

SEC. 28. All ordinances of the board may be proved by the certificate of the city register, with the seal of the city affixed, and when printed or published in book or pamphlet form, and purporting to be published by authority of the city, shall be read and received in evidence in all courts and places without further proof.

Public act.

SEC. 29. This act is declared to be a public act, and may be used in evidence in all courts of law and equity in this territory without proof.

This act to take effect and be in force from and after its passage.

CHAPTER 61.

An act supplemental to an act entitled, "an act to incorporate the City of Leavenworth.

§ 1. Judges of election appointed; to take oath.
§ 2. To give certificate of election.
3. Vacancy, how supplied.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. J. Harvey Day, W. H. Adams, and Lewis N. Rees, of the city of Leavenworth, are hereby appointed judges of election, to hold the first election for a mayor and board of councilmen under the provisions of an act entitled "an act to incorporate the City of Leavenworth;" such judges shall hold such election at such time and place within such city as they shall deem advisable, and they shall give at least three days' notice of such election either by ten written or printed handbills put up at ten public places in said city, or by one insertion in all the newspapers published within such city, or both; and such judges shall take an oath before some one authorized to administer oaths, faithfully and impartially to discharge their duties as judges of the election, which shall be certified and filed in the office of the clerk of the district court.

Judges of election appointed.

To take oath.

SEC. 2. Such judges shall give the person elected mayor, and to each person elected councilman, a certificate of his election.

To give certificate.

SEC. 3. If any of said judges shall, from any cause, fail to attend, the judge or judges attending shall supply such vacancy, and all votes given at such election shall be *viva voce*.

Vacancy how supplied.

This act to take effect and be in force from and after its passage.

CHAPTER 62.

An act to incorporate the Cofachiqui Association.

§ 1. Names of corporators; powers.
2. Powers of the corporation.
§ 3. May pass by-laws, &c.
4. May prescribe rules for transfer of stock.

Names of corporators.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Daniel Woodson, Charles Passmore, James S. Barbee, William Barbee, Samuel A. Williams, Joseph C. Anderson, and their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Cofachiqui Association, and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Powers.

Powers of corporation

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the territory of Kansas, where the city of Cofachiqui is now located, not to exceed nine hundred acres, and to lay the same off into parcels, squares and lots, and to sell, dispose of and convey the same by deed or otherwise.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers as the said company may by their by-laws designate, which deeds shall be acknowledged as other conveyances of real estate, and when so signed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts in this territory or elsewhere.

May prescribe rules for transfer of stock.

SEC. 4. The company may by by-laws prescribe rules for the transfer of the stock of the same by each individual stock or shareholder.

This act to take effect and be in force from and after its passage.

CHAPTER 63.

An act to incorporate the Tecumseh Lyceum and Library Association.

§ 1. Names of corporators.
2. Powers of the corporation.
3. What constitutes membership.
§ 4. Property free from tax.
5. Corporation to continue.

Whereas it has been represented to the General Assembly that an association, called the Tecumseh Lyceum and Library Association, has been formed in the town of Tecumseh, the object of which is the cultivation of literature and science, and the dissemination of useful knowledge among its members; now, for the purpose of securing the permanancy of this institution,

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That Thomas N. Stinson, John Martin, William O. Yager, Benjamin J. Newsom, D. W. Hunter, William A. M. Vaughan, Wm. A. Sublett, J. W. Kavanaugh, and their associates and successors, be and they are hereby constituted a body corporate and politic under the name and style of the "Tecumseh Lyceum and Library Association," and by that name to have continual succession, and be capable of suing and being sued, to plead and be impleaded, to answer and be answered unto, to defend and be defended, in all courts and places whatsoever; that they and their successors may have a common seal, and may change, break, or alter the same at their pleasure, and be in law capable of holding and conveying any estate, real, personal or mixed, for the use of this corporation.

Powers of corporation.

Sec. 2. That said corporation shall have the power to ordain a constitution and by-laws for the government of the members thereof, and to alter or amend the same at pleasure: *Provided*, that nothing in such constitution or by-laws shall be repugnant to the laws of this territory.

To constitute membership.

Sec. 3. That any person may be a member of this corporation who shall be elected by the members of the said association, and may continue such membership by complying with the by-laws and constitution thereof.

Free from tax.

Sec. 4. That the property held or owned by this corporation shall be free from all taxation whatsoever.

Corporation to continue.

Sec. 5. That the corporation hereby created shall continue so long as it faithfully observes the objects of its institution.

This act to take effect and be in force from and after its passage.

CHAPTER 64.

An act to incorporate the Mount Aurora Cemetery and Town Association.

§ 1. Names of corporators.
2. Powers of said company.
3. To have a common seal, &c.
4. May sue, implead, answer, &c.
§ 5. May pass by-laws, &c.
6. May provide for the election of officers.
7. May pass all necessary rules.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That Richard R. Rees, president; Joseph S. McAber, secretary; Samuel D. Pitcher, treasurer; J. Marion

Alexander, Archibald Payne, and Houston Long, trustees, and their associates and successors, and such others as may hereafter become members, be and they are hereby incorporated into and made a body politic and corporate by the name and style of the Mount Aurora Cemetery and Town Association.

Powers of said company.

SEC. 2. That said company shall be capable of holding, having, purchasing and taking in fee simple or on lease, or by quit claim, or in possessory right, by gift, grant, demise, purchase or otherwise, any lands, tenements or other estate, real or personal, or mixed, as may be necessary and proper to carry on the operations of said company; and they may also sell, alien or convey, lease or dispose of the same when the interests of the company may so require.

To have a common seal, &c.

SEC. 3. Said company may have a common seal, and the same may alter or change at pleasure; *provided*, that any and all acts of said company shall be of full and binding force without a corporate seal.

May sue, implead, &c.

SEC. 4. That said corporation, by their corporate name, may sue and be sued, implead and be impleaded, answer and be answered to, in any and all courts of the territory or elsewhere, and shall, in their corporate capacity, be liable for all debts contracted by said company, or damages resulting from any corporate act of said company; *provided*, that nothing in this section contained shall be so construed as to effect the individual liability of the members of said company under any existing laws of the territory.

May pass by-laws, &c.

SEC. 5. That said company may make, ordain and establish any by-laws and regulations necessary for the government of the same, not inconsistent with the constitution and laws of the United States or the organic act of Kansas territory, or any existing laws of this territory.

May provide for the election of officers, &c.

SEC. 6. That said company may by by-laws establish and provide for the election of such officers as may be deemed necessary, and shall have power, until otherwise ordered by law, to pass all needful regulations in relation to the disposition of lots for burial purposes, and to regulate burials, and also for the protection of the burial grounds and all useful or ornamental improvements thereon.

May pass necessary laws, &c.

SEC. 7. Said company may do all other acts, not inconsistent with law or established usages, which may be necessary fully to carry out the purposes of the association.

This act to take effect and be in force from and after its passage.

CHAPTER 65.

An act to incorporate the Calhoun Town Company.

§ 1. Names of corporators; authority.
2. Powers of the corporation.
3. May pass by-laws, &c.
§ 4. May fill vacancies.
5. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That G. P. Davis, E. H. Norton, J. Kuykendall, and their associates and successors, are hereby constituted and declared a body politic and corporate by the name and style of the Calhoun Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in law or equity, in this territory; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs.

Names of corporators.

Authority.

SEC. 2. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land where said town of Calhoun is now located, not to exceed one thousand acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same.

Powers of corporation.

SEC. 3. The company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged as other conveyances of real estate, and when so signed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or otherwise.

May pass by-laws, &c.

SEC. 4. The above named board of trustees shall have power to fill vacancies which may occur in their body by death, resignation or otherwise.

May fill vacancies.

SEC. 5. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and transferring of the said stock by each individual stockholder.

Stock deemed personal property.

This act to take effect and be in force from and after its passage.

CHAPTER 66.

An act to incorporate the Mount Vernon Town Company.

§ 1. Names of corporators; authority.
2. Powers of corporation.
3. May pass by-laws, &c.
§ 4. May fill vacancies.
5. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That Patrick Cooper, William Christison and William A. Fox, and their successors, are hereby constituted and declared a body politic and corporate by the name and style of the Mount Vernon Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in law or equity, in this territory; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold, and enter by pre-emption or otherwise, any quantity of land where said town of Mount Vernon is now located, not to exceed one thousand acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose of and convey the same.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the business of said company; and all deeds for the conveyance of the real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged as other conveyances of real estate, and when so signed and acknowledged shall be deemed and held a sufficient execution and authentication of such deeds in all courts in this territory or elsewhere.

May fill vacancies.

SEC. 4. The above named board of trustees shall have power to fill vacancies which may occur in their body by death, resignation or otherwise.

Stock deemed personal property.

SEC. 5. The stock of the company shall be deemed personal property, and the said company may by by-laws prescribe rules for the issuing and transferring of the same stock by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 67.

An act to incorporate the Whitehead Town Company

§ 1. Names of corporators; authority.
2. Powers of corporation.
§ 3. May pass by-laws, &c.
4. Stock deemed personal property.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That John H. Whitehead, James R. Whitehead, William R. Penick, James B. Atool, Isaac G. Weld, Jesse Brown, William P. Hess, Oliver Turner, and their associates and successors, are hereby constituted and declared a body politic and corporate by the name and style of the Whitehead Town Company, and by that name shall be capable of making contracts, of suing and being sued, of pleading and being impleaded, in all matters whatsoever, in law or equity, in this territory or elsewhere; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws and regulations as from time to time may be deemed necessary for the government of said company and the management of its officers [affairs].

Names of corporators.

Authority.

SEC. 2. The corporation hereby created shall have power to purchase and hold, and to enter by pre-emption or otherwise, any quantity of land, where said town of Whitehead is now located, not to exceed nine hundred and sixty acres, and to lay the same off into lots, parks, streets, squares and avenues, and to sell, dispose and convey the same by deed or otherwise.

Powers of corporation.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such times as may be necessary to carry out the said business of said company; and all deeds for conveyance of the real estate of said company shall be signed by such officers of said company as the by-laws of said company shall designate, which deeds shall be duly executed and acknowledged as other conveyances of real estate; when so signed, with the corporate seal attached, shall be deemed and held a sufficient execution and authentication of such deeds in all courts of this territory or elsewhere.

May pass by-laws, &c.

SEC. 4. The stock of said company shall be deemed personal property, and said company may by by-laws prescribe rules for the issuing and transferring of the same by each individual stock or shareholder.

Stock deemed personal property.

This act to take effect and be in force from and after its passage.

CHAPTER 68.

An act to incorporate the Town of Douglass.

§ 1. Names of corporators; to have and use a seal.
2. Powers of corporation.
3. May pass by-laws, &c.
4. May prescribe rules for transfer of stock.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas as follows:

Names of corporators.

SECTION 1. John W. Reid, George M. Clark, Chas. E. Kearney, Edward C. McCarty, Paris Ellison, M. W. McGee, their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Douglass Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to attest [alter] the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

To use a seal, &c.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land, in the territory of Kansas, where the town of Douglass is now located, not to exceed six hundred and forty acres, and to lay off the same into parks, squares, blocks and lots, and to sell and dispose of and convey the same by deed.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the real estate of the company shall be signed by such officers as the said company may by by-laws designate, and when so signed, with the corporate seal attached, shall be deemed and held a sufficient execution and authentication of such deeds in all courts or elsewhere.

May prescribe rules for transfer of stock.

SEC. 4. The said company may by by-laws prescribe rules for the transfer of the stock of the said company by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 69.

An act to incorporate the Town Company of Osawkee.

§ 1. Names of corporators; authority.
2. Powers of corporation.
§ 3. May pass by-laws, &c.
4. May prescribe rules for transfer of stock.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators

SECTION 1. That William F. Dyer, Duncan McDonald, T. D. S. McDonell, John M. Raily, Egbert W. Raily, W. M. Tebbs, John Doniphan and George M. Dyer, and their associates and successors, are hereby constituted a body politic and corporate by the name and style of the Osawkee Town Company, and by that name shall be competent to make contracts, sue and be sued, implead and be impleaded, in all matters whatsoever; said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

Authority.

Powers of corporation.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land, in the territory of Kansas, where the town of Osawkee is now located, not to exceed six hundred and forty acres of land, to lay off the same into parks, squares, blocks and lots, and to sell and dispose of and convey the same.

May pass by-laws, &c.

SEC. 3. The said company shall have power to pass by-laws for the election of such officers at such time or times as may be necessary to carry out the business of the company; and all deeds for the conveyance of the real estate of the company shall be signed by such officers of the said company as it shall designate, and when so signed, with the corporate seal attached, shall be deemed and held a sufficient execution and authentication of all such deeds in all courts or elsewhere.

May prescribe rules for transfer of stock.

SEC. 4. The said company may by by-laws prescribe rules for the transfer of the stock of said company by each individual stockholder.

This act to take effect and be in force from and after its passage.

CHAPTER 70.

An act to incorporate the Kaw River Telegraph Company.

§ 1. Names of corporators. | 2. Other sections applicable to this act.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That Isaac M. Veitch and Charles M. Stebbins, and their associates and assigns, who have acquired or may acquire the right to the electro-magnetic telegraph, patented by Professor Samuel T. B. Morse, are hereby created a body politic for the purpose of erecting and managing a line of telegraph, extending from a point near the mouth of the Kansas river where it may most conveniently connect with the line known as the St. Louis and Missouri River Telegraph Line, through such points on or near the Kansas river as the said corporators may elect, thence westward to the western boundary of Kansas territory, under the name and style of the Kaw River Telegraph Company.

Other sections applicable to this act.

SEC. 2. The second, third, fourth, fifth, sixth, seventh and eighth sections of an act entitled "an act to incorporate the Occidental Telegraph Company," passed at the present session of this legislative assembly, shall be applicable to this act.

This act to take effect and be in force from and after its passage.

CHAPTER 71.

An act to incorporate the Occidental Telegraph Company.

§ 1. Names of corporators.
2. Shares of stock, fifty dollars.
3. Cities or counties may take stock.
4. When and where meeting of board to be.
§ 5. Powers of the company.
6. May sue, complain, &c. Seal.
7. Duties of corporation.
8. Company may recover damages, when.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

SECTION 1. That Isaac M. Veitch and Charles M. Stebbins, and their associates and assigns, who have acquired or may acquire the right to the electro-magnetic telegraph, patented by Professor Samuel T. B. Morse, are hereby created a body politic for the purpose of erecting and managing a line of telegraph, extending from a point on the eastern boundary of Kansas territory where it may most conveniently connect with the line known as the St. Louis and Missouri River Telegraph Line, thence through the city of Leavenworth and such other points on or near the Missouri river as the said company may select, to the northern boundary of Kansas territory, under the name and style of the Occidental Telegraph Company.

Shares of stock, fifty dollars.

SEC. 2. That shares of stock in said company shall be fifty dollars each, and to be issued to the owners of the patent right of the telegraph and to the subscribers of stock in said line; said stock to be issued by the said corporation at the rate per mile as agreed to by them and the subscribers, allowing the route to such persons as may be entitled to the same, according to the subscription agreement; the stock in said company shall be exempt from taxation until a dividend is declared under the same.

City or county may take stock.

SEC. 3. It shall be lawful for any city, county or incorporated company to subscribe to the capital stock of the said Occidental Telegraph Company for the purpose of aiding in the construction of said telegraph line or any branch that the stockholders may see proper to project, and may issue the bonds of said city, county or incorporated company to raise funds to pay the stock thus subscribed, and appoint an agent to represent its interest, give its note and receive its dividends, and may take proper steps to guard and protect the interests of such city, county or incorporation.

When meeting of board to be; and where.

SEC. 4. As soon as the said line of telegraph is completed, a meeting of the stockholders of said line shall be convened at some eligible point on the route to take charge of and control the line, to elect a president and such other officers of the company as may be deemed to be necessary, notice to be given by the said corporation at least thirty days before the time of meeting.

Powers of the company.

SEC. 5. The Occidental Telegraph Company shall have power to set up their fixtures along and across any of the roads, streets or waters of this territory without their being deemed a public nuisance or subject to be abated by any private person, the said fixtures to be so placed as not to interfere with the common use of such roads, streets and waters, or with the convenience of any land owner more than is unavoidable; but the said corporation shall be responsible for any damages that any person or corporation may sustain by the erection, continuance and use of such fixtures, and in every action brought for the recovery thereof by the owner or possessor of any land, the damages to be awarded may, at the election of said corporation, include the damages for allowing the said fixtures permanently to continue, on payment of which damages the right of the corporation to continue such fixtures shall be confirmed as if granted by the parties to the suit; *provided*, that no person or body politic shall be entitled to sue for or recover damages as aforesaid until the said corporation, after due notice, shall have failed or refused to remove, in a reasonable time, the fixtures complained of, and such notice to any agent of said company shall be deemed a sufficient notice in the premises.

May sue, complain, &c.

Seal.

Sec. 6. The said company shall have power to sue and be sued, complain and defend, in any court of law or equity having competent jurisdiction; to make and use a common seal and alter the same at pleasure; to purchase and hold such real and personal estate as the lawful purposes of the corporation may require, and to sell and convey the same when no longer required for the legitimate purposes of the same.

Duties of corporation.

Sec. 7. The corporation shall be bound, on the application of any of the officers of this territory or of the United States, acting in the event of any war, insurrection, riot or resistance of public authority, or in the prevention or punishment of crime, or the arrest of persons charged on suspicion thereof, to give to the communications of such officers immediate dispatch; for the transmission of such communications the company shall not charge any higher price than for private communications of the same length.

Company may recover damages, when.

Sec. 8. That said company shall have power to sue for and recover damages from any person or persons who may break or intercept the working of said line of telegraph, to the amount of the loss sustained by the non-working of the line and its costs of repair, and in addition a fine of three hundred dollars as damages sustained by the company in the premises; and if any person or persons shall refuse or omit to pay such damages, he shall, or they shall, be imprisoned in the county jail for a term not less than six months nor more than one year, as may be determined by the court or jury by which the cause is tried.

This act to take effect and be in force from and after its passage.

CHAPTER 72.

An act to incorporate the Saline Gypsum Association.

§ 1. Gypsum Mining Company constituted.
2. May hold and convey real estate.
3. When they may commence operations.
4. At what places books are to be opened.
5. When directors are to be elected.
6. Directors to be chosen annually.
7. Elections to be by ballot.
8. Under whose direction elections are to be held.
§ 9. Directors to elect one of their number president.
10. To make by-laws, &c.
11. Stock may be transferable.
12. Record of accounts to be kept.
13. Not to engage in banking.
14. Privileges granted.
15. When dividends to be declared.
16. When the charter is void.
17. [illegible] assembly.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Gypsum Mining Company, constituted.

SECTION 1. For the purpose of developing the mineral resources of the country, and encouraging the mining, raising and selling of gypsum and other minerals, in the territory of Kansas, William A. Hammond, Robert C. Miller, John Dyer, William Barbee, Robert Wilson, Daniel Woodson, Horace Gray, John A. Halderman, and John Donaldson, and such other persons as may hereafter become associated with them, be and they are hereby constituted a body politic and corporate by the name and style of the "Gypsum Mining Company," and by and under such corporated name and capacity may sue and be sued, plead and be impleaded, in any of the courts of law or equity in this territory.

May hold and convey real estate.

SEC. 2. Said corporation may have a common seal and may change and alter the same at pleasure, and shall be capable of holding, using and conveying any estate, real and personal, necessary for the use of said corporation.

When they may commence operations.

SEC. 3. The capital stock of said corporation or company shall be one hundred thousand dollars, and it shall be divided into shares of fifty dollars each; but it shall be lawful for said corporation to commence their operations when and so soon as five thousand dollars shall be subscribed for, and with that capital to commence, conduct, operate and carry on the same, until they shall find it expedient to enlarge their stock, which they are authorized to do, from time to time, to the amount first above mentioned.

At what places books to be opened.

SEC. 4. Books for the purpose of procuring subscriptions to said stock shall be opened in the city of Pawnee and the town of Saline, under the direction of Robert Wilson, and at such other places as he may deem proper; and the said Robert Wilson is hereby appointed a commissioner to receive the subscriptions to said stock, on such days and times as he may appoint, after the passage of this act.

When directors are to be elected.

SEC. 5. So soon as the sum of five thousand dollars shall be subscribed, the commissioner, named in the fourth section of this act, having fixed the amount of the first instalment, shall appoint a day and place at which the stockholders shall meet and pay the said instalment on their respective shares, and elect directors, giving at least ten days' notice by advertisement in some public newspaper printed at the city of Pawnee, setting forth the time and place of said election.

Directors to be chosen annually.

SEC. 6. The stock, property, estates and concerns of said corporation shall be managed by five directors, to be annually chosen by the stockholders on the first Monday in October, in each year. Said directors shall hold their office for the term of one year, and until their successors are appointed, of whom three shall be a quorum for transacting business; *provided, however*, no failure to elect officers shall dissolve the corporation, but the acting directors shall continue in office until the next annual election.

Elections to be by ballot.

Sec. 7. All elections shall be by ballot, each share shall be entitled to one vote, and votes may be given by proxy.

Under what direction election to be held.

Sec. 8. The first election for directors shall be held under the directions of the said commissioners, and all subsequent ones under the direction of the directors.

Directors to elect one of their number president.

Sec. 9. The directors chosen under this act shall immediately elect one of their body president; and if any vacancy occur either of president or any of the directors, the remaining directors shall appoint, from among the stockholders, suitable persons to fill such vacancy for the remainder of the term for which such directors were elected.

To make by-laws, &c.

Sec. 10. The board of directors, or a quorum thereof, shall have power to form such by-laws and ordinances as shall, from time to time, seem to them to be needful and proper for the management and conduct of said corporation in disposing of the stock, property, estate and effects of said corporation, and to do all other things necessary to the promotion of the objects of said corporation as shall be consistent with the laws of the United States and the territory of Kansas.

Stock to be transferable

Sec. 11. The stock of said corporation shall be assignable and transferable, according to such rules and regulations as the board of directors may make and establish, and shall be considered personal property; *provided*, that no transfer of stock shall be valid or effectual until registered in a book kept for that purpose by the president.

Record to be kept.

Sec. 12. The directors shall at all times keep or cause to be kept, at some proper place, books of accounts, in which shall be entered all the transactions of the company.

Not to engage in banking.

Sec. 13. The corporation hereby created shall not engage in the business of banking, or issue any kind of paper to pass as a circulating medium.

Privileges granted.

Sec. 14. For the purpose of carrying out their operations, the said corporation may make, cut and dig canals, erect dams, and make such roads as may be necessary for their works and machinery.

When dividends to be declared.

Sec. 15. The directors of said corporation shall annually declare a dividend to all stockholders in said corporation, and at such other times as they may deem advisable; and at each annual election they shall lay before the stockholders their books, showing a full and fair exposition of all the transactions of the previous year.

SEC. 16. The powers granted by this charter shall cease unless said company shall organize and commence the transaction of its business within three years from the date of its passage.

When the charter is void.

SEC. 17. The general assembly hereby reserves the power to repeal, modify and amend this charter at any time, should any of its provisions be violated by said company.

Reserved powers of the general assembly.

This act to take effect and be in force from and after its passage.

CHAPTER 73.

An act to incorporate the Wyandotte Lyceum.

§ 1. Names of corporators.
2. Objects of the corporation.
3. Powers of the corporation.
§ 4. Of members of the corporation.
5. Property free from taxation.
6. Legislative assembly may alter or repeal.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That William Walker, Joel Garret, William J. Osborne, George J. Clark, Cyrus Garret, M. R. Walker, D. V. Clement, John W. Grayeyes, Mathew Mudeater, J. P. Walker, Silas Armstrong, Joel Walker, and their associates and successors, be and they are hereby constituted a body corporate under the name of the Wyandotte Lyceum and Library Association, and by that name to have continual succession, and be capable of suing and be sued, to plead and be impleaded, to answer and be answered unto, to defend and be defended, in all courts and places whatsoever; that they and their successors may have a common seal, and may change, break or alter the same at their pleasure; and be in law capable of holding and conveying any estate, real, personal or mixed, for the use of this corporation; *provided*, that said corporation shall not hold any real estate, except such as may be necessary for the use of the society.

Names of corporators.

SEC. 2. The objects of said corporation shall be the mutual improvement of its members, in oral discussions and literature, and establishing a permanent library.

Objects of the corporation.

SEC. 3. That said corporation shall have the power to ordain a constitution and by-laws for the government of the members thereof, and to alter or amend the same at pleasure; *provided*,

Powers of the corporation.

that nothing in such constitution or by-laws shall be repugnant to the laws of this territory.

Of members of the corporation.

Sec. 4. That any person may be a member of this corporation who shall be elected by the members of said association, and may continue such membership by complying with the laws and constitution thereof.

Property free from taxation.

Sec. 5. That the property held or owned by this corporation shall be free from all taxation whatsoever.

Legislative assembly may alter or repeal.

Sec. 6. That the corporation hereby created shall continue so long as it faithfully observes the objects of its institution; but the legislative assembly, whenever satisfied that it has failed to accomplish or pursue these objects, or has violated any of the provisions of this act, may alter or repeal the same.

This act to take effect and be in force from and after its passage.

CHAPTER 74.

An act to incorporate the Leavenworth Insurance Company.

§ 1. Capital stock of said company.
2. Amount paid on each share.
3. Commissioners to open books.
4. To choose a president of their body; other officers.
5. Declared a body corporate, &c.; powers.
6. Powers of the corporation.
7. Property, how managed.
8. Majority to constitute a board.
9. Of policy and contracts.
§ 10. Duty of secretary.
11. Of board of directors.
12. Of the stock.
13. May purchase real estate.
14. May hold real estate as security.
15. Exceptions to holding real estate.
16. Stock funds not to be employed, &c.
17. May hold public stock.
18. Time for which this act extends.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Capital stock.

Section 1. That an insurance company shall be and is hereby established in the city of Leavenworth, with a capital stock of one hundred thousand dollars, which may be increased from time to time in such manner as the directors of said company may prescribe, to any amount not exceeding five hundred thousand dollars, divided into shares of one hundred dollars each, to be subscribed and paid for by individuals, companies or corporations, as herein directed.

Amount paid on each share.

Sec. 2. At the time of subscribing there shall be paid one dollar on each share subscribed, and nine dollars more within thirty days after the first election of directors; if any stockholder fail to make such payment, such stockholder shall forfeit the amount paid on such stock at the time of subscribing; the balance due on each share shall be subject to the call of the directors, and the said company shall not be authorized to make any policy or contract of insurance until the whole amount of shares subscribed shall be paid on demand by approved notes or mortgages on real estate.

Commissioners to open books.

SEC. 3. Auley Macauley, J. Harvey Day, J. Marion Alexander, William H. Russell, D. A. N. Grover, M. P. Rively, John W. Martin, William Elliott, Wilburn Christison, David Churchill, James Findlay, H. D. McMeekin, John A. Halderman, Amos Rees, R. S. Rain, and William G. Matthias, of the county of Leavenworth, or any three of them, are hereby constituted commissioners to open books for the subscription to the capital stock of said company, at such times and from time to time as they may deem expedient, in the the city of Leavenworth, and such other places as they may think proper, under the superintendance of themselves or such other persons as they may appoint; the said commissioners shall cause twenty days' notice of the times and places of opening said books to be published in one or more newspapers published in Kansas territory, and whenever three hundred shares or upwards shall have been subscribed the said commissioners shall by public notice appoint the time and place of holding the first election of directors, who shall continue in office until their successors are chosen at the next annual election; it shall be the duty of the commission, as soon as the board of directors are elected, to deliver over to them all books and papers, and pay over all moneys they may have received belonging to said company, deducting therefrom their reasonable expenses.

To choose a president out of their body.

SEC. 4. The directors regularly chosen by the stockholders shall, as soon as may be after the first and every annual election, choose out of their body a president, who shall preside in the board until the next annual election; in case of the death, resignation or removal of the president or any director, the vacancy shall be filled by the board of directors; they may also appoint a president *pro tem.* in case of the absence of the president; they shall appoint a secretary, and all subordinate officers, clerks, agents and servants, who shall hold their offices during the pleasure of the board; they may, from time, appoint one or more persons from their own body to assist in transacting the business of said company, with such salaries as they may think proper; they shall fix the compensation of the president and all other officers, define their powers and prescribe their duties.

Other officers to be appointed.

Declared a body corporate, &c.

SEC. 5. The subscribers for the stock of the said company, their associates, successors and assigns, shall be, and they are hereby ordained, constituted and declared a body corporate and politic by the name and style of the Leavenworth Insurance Company, and by that name they and their successors shall have perpetual succession, and shall be capable in law of contracting and being contracted with, of suing and being sued, of impleading and being impleaded, of answering and being answered unto, of defending and being defended against, in all courts and places whatever, in all manner of actions, suits, complaints and causes, and they and their successors may have and use a common seal, and may alter and change the same at pleasure.

Powers, &c.

Powers of corporation.

SEC. 6. The corporation hereby created shall have full power and authority to make all kinds of insurance against loss on ships, steamboats or other vessels, their cargoes, goods, wares, merchandise, freight, produce and property of every kind, in the course of transportation by land or water; to make insurance against loss or damage by fire, on land or water, on every description of property and merchandise; to make all kinds of insurance upon lives, and to make such other insurances as they may deem expedient; to fix the premium of insurance; to lend money on bottomry and respondentia; to lend their surplus unemployed money or capital, on real or personal security, to companies, corporations or individuals, at an interest not exceeding the rate of interest which may for the time being be provided by law, per annum; to insure or guarantee the payment, at the time they may become due, of promissory notes, bonds, bills of exchange, and all other moneyed obligations, in virtue of their guarantee thereof. The said company shall, after the payment of said obligations, have and possess all the rights which the person or persons to whom such payment shall have been made had in and to the same, and shall have all such rights of action and remedies in law or equity for the recovery of the same that the said person or persons had. The said company may also cause themselves to be insured against all maritime and other risks, and upon the interest they may have in every vessel, goods or merchandise, in virtue of any loans they may have made on bottomry or respondentia, or in virtue of their guarantee of any promissory notes, bonds, bills of exchange or moneyed obligations, against all losses they may incur by reason of any insurance made by them on any life or lives, or against losses by fire, the perils of the sea, or inland navigation and transportation.

Property how managed.

SEC. 7. The stock, property and affairs of the company or corporation aforesaid shall be managed and conducted by nine directors, who shall be stockholders of said company, residing within this territory; and after the first election they shall be elected by the stockholders annually, on the first Monday in January, at the office of the company, unless the directors appoint some other place, and they shall hold their office one year or until their successors are chosen in like manner and no longer, such election shall be by ballot, under the inspection of three stockholders holding no office in the said company, to be previously appointed by the board of directors; notice of every election of directors and all other general meetings of the stockholders shall be published in one or more newspapers at least twenty days' previous thereto, and at every such meeting or election each share shall entitle the holder to vote; absent stockholders may vote by proxy, such proxy being made in writing to a stockholder present at such meeting. In case it shall happen that an election of directors shall not be made on any day when it ought to have been made pursuant to this act, the said corporation shall not for that cause be dissolved, but it shall be lawful on any other day to hold an election for directors, in such manner as the by-laws and ordinances of the said company may direct.

Majority to constitute a board.

SEC. 8. A majority of the directors of said company shall constitute a board competent to transact the businses of the corporation; they shall have power and authority to make all necessary by-laws, rules and regulations for their own government, and for the management and disposition of the stock, property, funds and business of said company; to insure against all risks authorized by this act; to receive for the amount of promises and guarantees such notes, endorsed and payable in such manner and such times as they may deem proper, in conformity to the by-laws made on the subject; to settle, adjust and pay all losses for which the company may become liable; to arbitrate or compromise all doubtful claims against said company for loss or damage; to declare and make dividends semi-annually, if so much of the clear profits arising from the business of the company shall appear to them advisable, and cause the same to be paid to the stockholders in proportion to the amount paid in by each respectively; the board of directors may, however, confide to the president or any ten of the directors the power of insuring risks, fixing and receiving premiums and guarantees, adjusting and paying losses to such amount as they may think prudent, and the power generally to do and perform all acts necessary and convenient for the management of the affairs of said corporation, and to carry into effect the powers and purposes of this act.

Of policies and contracts.

SEC. 9. All policies or contracts of insurance and instruments of guarantee made by said company shall be subscribed by the president or president *pro tem.* and attested by the secretary.

Duty of secretary.

SEC. 10. It shall be the duty of the secretary, at every annual election; or other general meeting of the stockholders, to lay before them a correct and particular statement of the condition and affairs of the company.

Of board of directors.

Sec. 11. The board of directors shall convene according to their by-laws, or whenever required by the president or any ten of the directors.

Of the stock of the company.

Sec. 12. The stock of said company shall be considered personal property, and shall be assignable or transferable on their books or otherwise, according to such rules and restraints as the board of directors shall make and establish, subject, however, to the general laws of the territory as they now exist or may be changed hereafter.

May purchase and hold real estate, &c.

Sec. 13. It shall be lawful for the said company to purchase and hold such real estate as may be necessary for the transaction of its business, not exceeding the yearly value of five thousand dollars.

May hold as security, &c.

Sec. 14. The company may also take and hold real estate as security, or on mortgage or pledge, to secure the payment of debts due to the company either for shares of capital stock or otherwise; to purchase and hold real estate sold in virtue of any judgment or decree in favor of said company, and to receive and hold real estate in satisfaction of any debts due to the company, previously contracted in the course of its lawful dealings.

Exceptions to holding real estate.

Sec. 15. It shall not be lawful for said company to hold any real estate, except as specified in the thirteenth section, longer than shall be necessary to enable said company to make sale of the same for money or on such other terms as the directors shall deem most for the interest of the company.

Stock, funds, &c., not to be employed, &c.

Sec. 16. The said company shall not employ any of its stock, funds or money in buying or dealing in goods, wares, merchandise or other commodities; nor shall such company emit any note or bill, as a currency, under any pretence whatever; nor make any note, bill, or other contract, except in the line of its business authorized by this act.

May hold public stock.

Sec. 17. Such company may purchase and hold public stock or funded debt created or to be created under the laws of the United States or of this territory, or any state or territory within the United States, for the purpose of vesting therein any part of the proceeds or money of the company, to sell out and transfer the same, and re-invest the proceeds in the same manner.

Time for which this act extends.

Sec. 18. This act shall be in force from and after the passage thereof and continue for the term of thirty years; the said corporation shall, nevertheless, retain such powers as shall be necessary to close and settle their business, collect their debts, and dispose of their property, for the space of two years after the said term shall expire, and no longer.

CHAPTER 75.

An act to incorporate the Leavenworth Lodge, No. 150, of Ancient Free and Accepted Masons.

§ 1. Names of corporators; powers.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That Richard R. Rees, Archibald Payne and Auley McCauley, worshipful master, senior and junior wardens of Leavenworth Lodge, No. 150, Ancient Free and Accepted Masons, and their successors in office, be and they are hereby created a body corporate and politic by the name and style of Leavenworth Lodge, No. 150, Ancient Free and Accepted Masons, and by such name and style may sue and be sued, contract and be contracted with, plead and be impleaded, answer and be answered, defend and be defended against, in all courts and places whatsoever; and to purchase and hold real and personal estate, so far as may be necessary for the proper management of its affairs; to have and use a common seal, with power to alter the same at pleasure, and to do all other acts which natural persons might or could do.

Powers.

This act to take effect and be in force from and after its passage.

CHAPTER 76.

An act to incorporate the Leavenworth Improvement Association.

§ 1. Names of corporators; powers.
2. Capital stock of corporation.
3. Officers of the association; how elected.
§ 4. Time and place for opening books for subscription.
5. All votes to be by ballot.
6. Not to hold real estate for speculation.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That Christopher W. Spaulding, Charles R. Coffin, George H. C. Shaw, Ebenezer N. O. Clough, John W. McBride, A. T. Pattie and Bartholomew O. Driscol, and their associates and successors, are hereby constituted a body politic and corporate, in law and in fact, by the name and style of the "Leavenworth Improvement Association," and by that name shall have

Powers.

perpetual succession, may sue and be sued, plead and be impleaded, defend and be defended against; may make and use a common seal; shall by the name and style aforesaid be able and capable of purchasing, receiving, holding, having and enjoying, to the [use of] said association, lands, tenements, hereditaments, annuities, moneys, goods and chattels, of whatsoever nature, kind and quality, real, personal and mixed, for carrying on the business of said incorporation, or choses in action, and the same from time to time, at their pleasure, to sell, demise alien, and dispose of, in manner and form as shall be provided by the by-laws of the association; shall have power to erect buildings, and manufacture all the materials necessary thereto; also, to contract with the mayor and council of the city of Leavenworth to build bridges, drains, culverts, sewers, buildings and levees, and to grade streets, for the improvement of said city of Leavenworth and to make and execute such laws, rules, regulations and contracts, and the same to alter, amend or repeal, as the said association shall deem to be proper and expedient for the government and conducting of the business of the said association; and generally to do all and singular the matters and things proper for the well-being of the association, and the due management and ordering of its officers [affairs].

Capital stock of corporation.

SEC. 2. The capital stock of this corporation shall be twenty-five thousand dollars, divided into shares of one hundred dollars each, and it may be increased whenever the holders of two-thirds of the stock shall by vote so direct; the stock shall be deemed personal property, and shall be transferable on the books of the corporation in such manner as its by-laws prescribe.

Officers of the association.

SEC. 3. The officers of this association shall be a president, secretary and treasurer, and two other persons to be selected by the stockholders, who shall constitute a board of directors; and the affairs of the corporation shall be managed and its powers exercised by said directors, who shall be elected by the stockholders in such manner and form as shall be prescribed by the by-laws, and the directors shall hold their offices until their successors are elected; any vacancies occuring in the board of directors shall be filled by appointment by said board for the unexpired part of the term.

How elected.

At what place books opened for subscription, &c.

SEC. 4. At such time and place as a majority of the corporation named in this act shall, in writing, appoint, books shall be opened for subscription to the capital stock, and as soon as the stock to the amount of ten thousand dollars shall have been subscribed, the said corporation or a majority of them shall designate a time and place for the election of directors, and shall give written or printed notice thereof to each subscriber, personally or through the post office, at least ten days before the day so appointed.

Votes to be by ballot.

Sec. 5. At all elections, the stockholders shall vote by ballot, either personally or by proxy, and each share of the stock shall entitle the holder to one vote thereon; the person receiving the highest number of votes shall be declared elected, and in the event of two persons receiving the same number of votes, the remaining members of the board shall determine by vote which of the two shall be declared elected.

Not to purchase or hold real estate for speculation, &c.

Sec. 6. Nothing within this act of incorporation shall be so construed as to allow said association to purchase and hold or sell real estate for the mere purpose of speculation, aside from what they may acquire or purchase to secure debts due the association, legitimately created by improvements made by said association within the corporate limits of the city of Leavenworth. This act to take effect and be in force from and after its passage.

CHAPTER 77.

An act to incorporate the Alexandria Coal Mining Company.

§ 1. Names of corporators; powers, &c.
2. First meeting when called; term of office.
3. Duty of directors.
4. Powers of corporation.
5. Not to contract debts, &c.
6. Powers of corporation.
7. May own land, &c.
8. May purchase coal banks.
§ 9. Capital stock.
10. Capital increased, when.
11. Privileges of company.
12. Management, how vested.
13. Duty of directors.
14. Stock transferable.
15 May open books for subscription.
16. Act to continue, how long.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That J. Marion Alexander, Lewis N. Rees, S. D. Pitcher and Francis Browning, their associates and successors, are hereby constituted a body politic and corporate by the name of the Alexandria Coal Company, for the purpose of exploring for coal within the space of fifteen miles east and west of the town of Alexandria, on the Stranger creek, and three miles north and south of the same town of Alexandria, and for mining and vending the same; and for such purposes may erect all necessary buildings and other apparatus and fixtures for carrying on their operations, and by that name may sue and be sued, plead and be impleaded, appear, prosecute and defend, in any court of law or

Powers, &c.

equity, in all suits and actions; may have a common seal and the same altered and renewed at pleasure, and may enjoy the privileges incident to corporations, and may purchase, hold, mortgage, transfer and convey any real and personal estate.

First meeting when called.

SEC. 2. That the first meeting of said corporation may be called by the persons named in this act, at such time and place as they may select, and at such meeting a board of directors may be chosen from among the stockholders present at such meeting, and such board of directors shall take [charge] of the operations of the company, subject to such rules and regulations as may be adopted by the stockholders; that said directors shall hold their offices for one year, or until their successors are appointed, and may adopt such by-laws and regulations for the government of the concerns of the company as they may deem expedient, not inconsistent with the rules made by the stockholders as aforesaid, nor with the constitution and laws of the United States.

Term of office.

Duties of directors

SEC. 3. That the directors shall cause a book to be kept, containing the names of all persons who are stockholders of said company, showing their places of residence and the number of shares of stock held by each respectively, and the time when they became respectively the owners of said shares, and the amount of stock actually paid in; which book shall, during the usual hours of each secular day, be opened at the place of business of said company, for the inspection of the stockholders and creditors of the company, and their representatives.

Powers of corporation.

SEC. 4. That the said corporation may divide their original stock into such number of shares, and provide for the sale and transfer thereof, in such manner and form as they may deem expedient; and may levy and collect assessments, and forfeit and sell delinquent shares in said mines, in such manner as their by-laws may direct.

Not to contract debts until fifty thousand dollars is paid in.

SEC. 5. That the said corporation shall not contract debts until the sum of fifty thousand dollars of the capital stock is paid in, no part of which shall be withdrawn or in any way diverted from the business of this company, and shall not contract debts at any time beyond or exceeding the capital stock of said company.

Powers of corporation.

SEC. 6. That for the ready transportation of the products of said mines and manufactures, the said company shall have power to survey, locate, establish and construct a railroad, macadamized road or turnpike, from the works and premises of the company to such point on the Missouri river as said company shall select, and the said road with its necessary appurtenances kept in continual use and repair; and if a macadamized road, or turnpike road, or plank road is constructed, to establish toll gates to collect and exact tolls from persons using said road, the rate of toll to be established by the tribunal transacting county busines so soon as said macadamized or plank road is completed or partly completed.

May own parcels of land.

SEC. 7. That it shall be lawful for said company to own pieces or parcels of land on the route of the road to the river, and to erect warehouses, workshops and other buildings thereon, and to lease and sell lots to workmen and other persons.

May purchase banks of coal.

SEC. 8. That the said company may purchase, lease and own the banks of stone coal wheresoever they may deem necessary.

Capital stock.

SEC. 9. The capital stock of said company shall consist of one thousand shares, of one hundred dollars each (with the privilege of increasing the same to ten thousand shares), in addition to the lands and real estate which said company may acquire either by purchase for money or its own stock, and all real estate purchased with the stock of the company which may be created, and certificates issued accordingly.

Capital increased, when.

SEC. 10. That in the event said company shall construct any such road as hereinbefore authorized to be constructed, and it shall be found by said company that the capital of said company is insufficient for such purpose, it shall be lawful for such company to receive new subscriptions for stock to the amount of the cost of such road or such portion thereof as may be necessary, and they may increase the capital stock in proportion to such additional subscription.

Privileges of said company.

SEC. 11. The said company shall have the right of way over any land through which such road, as may be constructed, shall pass; *provided*, that said company shall pay all damages or injury which may be done by the construction of such road, or shall have obtained the right of way from the proprietor of such land, such damages to be assessed by a jury upon the order or warrant of any justice of the peace of the county through which such road may run, upon ten days' notice, and such jury shall take into consideration in their assessment as well the benefits derived as the injury done to any such premises.

Management vested in directors, &c.

SEC. 12. The management of the said company shall be vested in five directors, who shall be stockholders, any three of whom shall constitute a quorum to do business; such directors shall hold their offices for one year and until their successors are elected and qualified.

Duty of directors.

SEC. 13. The board of directors, as soon as practicable after their election, shall proceed to elect one of their number president of the company, and the president and directors shall elect or appoint all such other officers and persons as they shall deem necessary for the management and care of the business of the company.

Stock transferable.

Sec. 14. The stock of said company shall be transferable on the books of said company in such manner as the board of directors shall prescribe by law.

May open books for subscription.

Sec. 15. Said company may, under the direction of the three first-named persons mentioned in the first section of this act, open books at such place or places as they may deem proper; and if such persons shall not open such books, then the board of directors of such company may cause the same to be done at any time hereafter, under such regulations as such board think best.

Act to continue in force forty years, subject to repeal, &c.

Sec. 16. This act of incorporation shall continue in force for forty years, subject, nevertheless, to repeal by any subsequent legislature. Nothing in this act shall be so construed as to empower said company to purchase or hold any more real or other property than may be necessary for the legitimate purposes of said Coal Mining Company, nor to enter upon the lands of other persons for the purpose of exploring for coal without the consent of such landholder or landholders.

This act to take effect and be in force from and after its passage.

CHAPTER 78.

An act to incorporate the Kansas Mining Company.

§ 1. Names of the corporators; privileges, authority, &c.
2. Power to construct roads, &c.
3. Capital stock of the company.
4. May open books for subscription.
5. Management of its affairs, how vested.
6. Duty of board of directors.
7. Stock assignable and transferable.
8. Subscription on stock to be paid in as required by board.
§ 9. Property liable for debts of company.
10. Who deemed guilty of misdemeanor; penalty.
11. Transactions subject to inspection of stockholders.
12. Treasurer to execute a bond; condition; of trustees.
13. Duty of board of directors.
14. Company may issue bonds, when.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That F. J. Marshall, A. G. Woodward, R. C. Bishop, John Doniphan, James Doniphan, David Gillespie, R. T. Gillespie, Daniel Stephens, H. Mills Moore, John F. Baker, Dent. G. Tutt, Joseph Maline, S. E. Frazer, J. C. Thompson, Aristides Rodrigue, M. M. Nagle, Bela M. Hughes, James M. Hughes, John Donaldson, Richard Rees, H. J. Wolf, E. S. Wilkerson, Peter T. Abel, S. A. Williams, H. D. McMeekin, and such other persons as may hereafter become associated with them, shall be and they are hereby incorporated and made a body corporate and politic by the name and style of the "Kansas Mining Company," and by that name and style they and their successors and assigns shall have continual succession, and be entitled to all the immunities and privileges of the Kansas Mining Company as a body corporate and politic, such as contracting and being contracted with, suing and being sued, pleading and being impleaded, defending and being defended, answering and being answered, in any court of this territory or of the United States; and they and their successors may have a common seal, and may make and alter the same at pleasure; and the said company shall have full power and authority to open and work any mines of coal, lead, or other minerals, or ores, that may exist on any lands which the said company may acquire in the territory of Kansas, and on such lands to erect furnaces, foundries, forges and manufactories of every kind and description necessary for the manufacture of such minerals; and they and their successors, as a body corporate by the aforesaid name and style, shall be competent and capable of purchasing, receiving by donation, gift, grant or devise, holding, mortgaging and conveying any property or estate whatever, real, personal or mixed.

Privileges.

Authority, &c.

Powers to construct roads, &c.

SEC. 2. That for the ready transportation of the produce of such mines and manufactories the said company shall have the power to survey, locate, and establish and construct a road of plank, turnpike or railroad, from the said works and premises of the company to such point or depot as shall be deemed necessary.

Capital stock of company.

SEC. 3. That the capital stock of said corporation shall be twenty thousand dollars, with the privilege of increasing the same, which capital shall be equally divided into shares of one hundred dollars each, entitling the holder of the same to one vote, either in person or by proxy, in the election of the board of directors.

May open books for subscription.

SEC. 4. That the said Kansas Mining Company, or their associates, shall act as commissioners to procure subscribers for the stock of the company, and for that purpose shall open books at such places and on such days, after the passage of this bill, as they may deem proper; and as soon as one hundred shares are subscribed, and five per cent. thereon paid in, they shall notify the stockholders of the fact, designating some convenient time and place to meet and hold an election for directors.

Management of its affairs, how vested.

SEC. 5. The management of the affairs of said company shall be vested in seven directors, who shall be stockholders, four of whom, with the president, shall constitute a quorum to do business; such directors shall hold their office for one year, and until their successors are elected.

Duty of the board of directors.

SEC. 6. The board of directors, as soon as practicable after their election, shall proceed to elect by ballot from among themselves one person to be president of said company, and then shall proceed to appoint a secretary and treasurer, and such other subordinate officers as by the by-laws of said corporation shall be required, and at pleasure shall remove such secretary, treasurer or subordinate officer or officers, and at any time fill such vacancy that may in any way happen; and said board of directors shall at all times superintend and manage the funds and affairs of the corporation, and shall have power to make and prescribe such by-laws, rules and regulations, not repugnant to the law or provisions of this charter, as shall appear to them needful and proper, touching the management and disposition of the stock, property, estate and effects of the said corporation; and in case of a vacancy in said board, by death or otherwise, the remainder of said board shall have power to fill the vacancy.

Stock of company assignable.

SEC. 7. The stock of said company shall be assignable and transferable according to such rules and regulations as the board of directors may make and establish, and said stock shall be considered personal property; *provided*, that no transfer of stock shall be valid and effectual until registered in a book to be kept for that purpose by the president or board of directors, which book, at all reasonable hours, shall be open to the examination of all stockholders or persons having demands against the corporation or any member of it.

Subscription on stock to be paid in as required by board of directors.

SEC. 8. That after said company shall be duly organized, the remaining ninety-five per cent. due on the subscription to the capital stock shall be paid in such manner and at such time as the board of directors shall require, they giving always thirty days' notice of the time and place of payment; and in default of payment, the president or secretary, by order of the board, shall sell the shares of any stockholder making default, or a sufficient number thereof to discharge and pay the amount due, and the purchaser shall have and hold the said stock with the same rights and privileges as if originally subscribed by him.

Property liable for debts of company.

SEC. 9. That from the time said company shall be organized and the certificates of stock issued, all the property, real and personal, moneys, credits and effects of said company shall be liable for the debts of the same; and all real estate conveyed to said company, in consideration of its stock, shall, from the date of the execution of the conveyance, be liable for the debts of the same.

What deemed guilty of misdemeanor, penalty.

SEC. 10. That if any person or persons shall wilfully do or cause to be done any act or acts whatever, whereby any building, construction or other property of said company, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, injured or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the said corporation double the amount of damages sustained by means of such offence or injury, to be recovered in the name of said company, with costs of suit, by action of debt, in any court having jurisdiction of the same.

Transactions subject to the inspection of stockholders.

SEC. 11. The directors shall at all times keep or cause to be kept, at some proper place, proper books of accounts, in which shall be entered all the transactions of the said corporation, which books shall at all times be subject to the inspection and examination of the stockholders of said company.

Treasurer to execute a bond.

Condition.

SEC. 12. The treasurer of said corporation, before entering upon his official duties, shall enter into a good and sufficient bond to be determined upon by the said board of directors, *conditioned* for the faithful performance of his duties, and for the delivery to his successor in office, or to the board of directory, all moneys, bonds, bills, papers, notes, books, and all other things which may come to his possession as the treasurer of said board of directors and said corporation. The treasurer shall keep a just account of all moneys paid out, and on what account, and render an account of the receipts and expenditures of the corporation to said board of directors at least quarterly, all which books and accounts shall at any time, and at all seasonable hours of business, be open to each member of the board of directors, or any stockholder who may obtain the permission of the president of the board of directors.

To report quarterly.

Duty of board of directors.

SEC. 13. It shall be the duty of said board of directors to make and declare an annual dividend, on the shares subscribed, of so much of the surplus profits arising from the business of the said corporation as they or a majority of said board of directors may deem advisable, which dividend shall be subject to the call of the stockholders at any time after such division shall have been made and published.

Company may issue bonds, when.

SEC. 14. In raising money for the completion of some of the objects set forth in this act of incorporation, the company shall have the privilege of issuing its bonds in sums not less than ten dollars, redeemable at any time after two years from date, bearing interest at a rate of not more than fifteen per cent. per annum, and as much less as may be agreed upon.

This act to take effect and be in force from and after its passage.

CHAPTER 79.

An act to incorporate the Wathena Plank and Macadamized Road Company.

§ 1. Names of corporators; powers.
2. May locate and complete road, &c.; damages to be paid.
3. Capital stock of company.
4. Government vested in directors; how chosen; majority a quorum.
5. Who are authorized to execute the powers herein granted.
6. May erect toll-houses, &c.

§ 7. To pay damages which may arise.
8. Guardians of children may release damages, when.
9. Damages by any person, how punished.
10. Annual meetings, when.
11. Stock free from taxation.
12. May make by-laws, &c.
13. May discharge payment, how.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Section 1. That John Curd, Joseph C. Hull, Preston F. Moss, William Ridenbaugh, Silas Woodson, Ebenezer Blackiston, William Mathews, Milton Bryant, Daniel Vanderslice, Carey B. Whitehead, Joel P. Blair, Martin V. Rogers, and their associates, successors and assigns, be and they are hereby constituted a body politic and corporate under the name of the "Wathena Macadamized and Plank Road Company," and by that name shall be capable, in law and equity, to sue and be sued, plead and be impleaded, defend and be defended, in any court or place whatsoever; to make, have and use a common seal, the same to renew and alter at pleasure; and by that name and style to be capable in law of contracting and being contracted with, and of purchasing, holding and conveying real and personal estate, for the purposes of building and keeping in repair the said road, and shall be and hereby are invested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act.

Powers.

May locate, complete, &c., macadamized road.

Sec. 2. The said company are hereby authorized and empowered to locate, construct and finally complete a plank or macadamized road, with a single or double track, commencing on the north bank of the Missouri river, opposite the city of St. Joseph, in Missouri, and running thence to Wathena, and for this purpose said company are hereby authorized to lay out said road, not exceeding sixty feet wide, through its whole length; and for the purpose of embankments and procuring timber, stone or gravel, may take so much land as may be necessary for the purposes of construction and security of said road; *provided, however,* that all damages that may be occasioned to any person or corporation by the taking of such lands or materials, for the purposes afore-

Damages to be paid,

said, shall be paid for by said company in the manner hereinafter provided.

Capital stock of company.

SEC. 3. The capital stock of said company shall consist of five hundred shares, of twenty-five dollars each, with the privilege to increase the same to an amount sufficient to carry into effect the objects and intentions of this act.

Government vested in directors, how chosen

Majority to form a quorum.

SEC. 4. The immediate government and direction of said company, in its affairs, shall be vested in a board of not less than five nor more than nine directors, who shall be chosen by the stockholders of the corporation in the manner hereinafter provided, and shall hold their offices until others shall be duly elected and qualified to take their places as directors; a majority of whom shall form a quorum for the transaction of business, and shall elect one of their number to be president of the board, who shall also be president of the company; and shall have authority to choose a clerk, who shall be sworn to the faithful discharge of his duty, and a treasurer, who shall give bond to the corporation with securities to the satisfaction of the directors for the faithful discharge of his trust.

Who are authorized to exercise the powers granted.

May sell shares, &c.

SEC. 5. The president and directors for the time being are hereby authorized and empowered, by themselves or their agents, to exercise all the powers herein granted to the company for the purpose of locating, constructing and completing said road, and all such power and authority for the management of the affairs of said company, not heretofore granted, as may be necessary and proper to carry into effect the objects of this company; to purchase and hold lands, materials and other necessary things in the name of the company, and for the use of the road, and to make such equal assessments from time to time, on all said shares in said corporation, as they may deem expedient and necessary in the execution and progress of the work, and direct the same to be paid to the treasurer of the company; and the treasurer shall give notice of all such assessments, and in case any subscriber shall neglect to pay his assessment for the space of thirty days, after due notice by the treasurer of said company, the directors may order the treasurer to sell such share or shares at public auction, after giving due notice thereof, to the highest bidder, and the same shall be transferred to the purchaser, and such delinquent subscriber shall be accountable to the company for the balance if his share or shares sell for less than the assessment due thereon, with the interest and costs of sale, and shall be entitled to the overplus if his share or shares shall sell for more than the assessment due, together with the interest and costs of sale; *provided, however*, that no assessment shall be made upon any one share of said company of over twenty-five dollars.

May erect toll-houses, &c.

SEC. 6. The directors for the time being are hereby authorized to erect toll-houses and other necessary buildings, to establish toll-gates, appoint toll-gatherers, and demand and recover toll upon the road when completed, and upon such parts thereof as shall from time to time be completed, and shall have power to fill any vacancy in the board of directors which may be occasioned either by death, resignation or otherwise.

To pay damages which may arise, &c.

SEC. 7. The said company shall be holden to pay all damages that may arise to any person or persons, corporation or corporations, by taking their lands for said road; when it cannot be done voluntarily, to be estimated and recovered in the manner prescribed for by law for the recovery of damages happening by the laying out of territorial roads.

Guardian may release damages, when.

SEC. 8. When lands or other property of any infant or person *non compos mentis* shall be necessary for the construction of said road, the guardian of such infant or person *non compos mentis* may release all damages for any lands or estates taken and appropriated as aforesaid, as they might do if the same were holden by them in their own rights respectively.

Damage done by any person, how punished.

SEC. 9. If any person shall wilfully do or cause to be done any act or act whatever whereby any buildings, constructions or works of said corporation, or any machine, bridge or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to said company or corporation treble the amount of damages sustained by such offence or injury, to be recovered in the name of said corporation, with costs of suit, by action in any court of competent jurisdiction, and shall be subject to indictment and punishment for crimes and misdemeanors as in other cases.

Annual meetings, when.

SEC. 10. The annual meeting of the stockholders of said company shall be holden on the fifteenth day of July, in each year, at the town of Wathena, unless otherwise ordered by a majority of the stockholders, at which meeting the directors shall be chosen by ballot, each stockholder being entitled to as many votes as he holds shares, which may be given either in person or by proxy; and any five individuals, named in the first section of this act, are hereby authorized to call the first meeting of said company for the purpose of organizing the same, by giving due notice, stating the time, place and purpose of such meeting, at least twenty days before the time mentioned in such notice.

SEC. 11. The stock of said company shall be free from all taxation, either by county or territory, so long as said company shall permit to pass free of charge all officers of this territory, and all materials for the use of the same.

Stock free from taxation.

SEC. 12. The said company shall have power to make, ordain and establish all such by-laws, rules and regulations as they may deem expedient and necessary to accomplish the designs and purposes and to carry into effect the provisions of this act; *provided*, however, the same be not repugnant to the laws of this territory or of the United States.

May make by-laws, &c.

SEC. 13. Any person subscribing stock in the foregoing plank road may discharge the same in work on said road, under such rules and regulations as the president and directors may prescribe.

May discharge payment, how.

This act to take effect and be in force from and after its passage.

CHAPTER 80.

An act entitled an act to incorporate the Lecompton Bridge Company.

§ 1. Names of corporators; to receive subscriptions.
2. Commissioners to make certificates, &c.
3. To give notice of time of organization.
4. Duty of the president and managers.
5. Times of meeting, how governed.
6. Bridge not to interfere with navigation.
7. Of stockholders.
8. Duty of president and managers.
§ 9. To keep true account of finances.
10. Injury sustained, how punished.
11. Obstructions on said bridge, how punished.
12. Of suits or actions.
13. Of extension of bridge.
14. Liable to pay damages, when.
15. Parties injured to sue.
16. Powers of the company.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Edward Bates, Robert Campbell, Edward Charles and Nathaniel Paschall, of St. Louis, Mo., John F. Ryland, Mordecai Oliver, of Richmond, Mo., Oliver Anderson and Robert Aull, of Lexington, Mo., James C. Anderson, of Fulton, Callaway Co., Mo., B. G. Boone and John Warwell, of Westport, Mo., Samuel T. Jones, Aristides Rodrigue, R. L. Miller, Cyprian Chouteau, James Finley, J. B. Donaldson, of Kansas territory, be and they are hereby appointed commissioners to do and perform the several duties hereinafter mentioned; that is to say, they shall procure one or more books and therein enter as follows: "We, whose names are hereunto subscribed, do promise to pay to the Lecompton Bridge Company the sum of twenty-five dollars for every share of stock in the said company,

Names of corporators.

set opposite to our respective names, in such manner and proportion and at such times as shall be determined by the president and managers, in pursuance of an act of the legislative assembly entitled 'an act to incorporate the Lecompton Bridge Company,'" and shall thereupon proceed to receive such subscriptions for the stock of said company at such times and places as they shall think proper; *provided, always*, that every person so subscribing, in his own name or in the name of any other person, shall previously pay to the attending commission five dollars for every share so subscribed, out of which shall be paid the expense of taking such subscriptions and other incidental charges, and the remainder shall be paid over to the treasurer of the corporation as soon as the same shall have been organized agreeably to the provisions of this act.

To receive subscriptions.

Commissioners to make certificates, &c.

SEC. 2. That when ten or more persons shall have subscribed two hundred shares of the said stock, the said commissioners, or five of them, shall make duplicate certificates under their hands and seals, of the names of the subscribers and the number of shares subscribed by each, one of which certificates shall be filed in the office of the secretary of the territory and recorded in the executive minutes, and the other shall be returned and entered in the books of the company; and thereupon the said subscribers shall be and hereby are incorporated into a body politic or corporate, in deed and in law, by the name of "The Lecompton Bridge Company," and by the said name shall have perpetual succession and all privileges and franchises incident to a corporation, and shall be capable of taking and holding their said capital stock and the increase and profits thereof, and of enlarging the same from time to time by new subscriptions, in such manner and form as they shall think proper, and if such enlargements shall be found necessary to fulfil the intent of this act; and of taking, purchasing and holding to them and their successors in fee simple, or for any less estate, all such lands, tenements, hereditaments and estates, real and personal, as shall be necessary and convenient in the prosecution of their works, and the same to sell and dispose of at their pleasure; of suing and being sued, and doing all and every other matter or thing which a corporate or body politic may lawfully do; and a certified copy of said certificate, under the hand and seal of the secretary of the territory, shall be at all times evidence of the compliance with this section.

To give notice of time of organization.

SEC. 3. That any five of the persons named in this act of incorporation shall, so soon as conveniently may be, after sealing the same, give notice in any two newspapers of the territory, and of the same in Missouri, of a time and place, to be by them appointed, not less than twenty days from the time of issuing the first notice, at which time and place the said subscribers shall proceed to organize the said corporation, and shall choose, by a majority of votes of the said subscribers by ballot, either by proxy duly authorized or in person, one president, six managers, one treasurer, and such other officers as they may think necessary to conduct the business of said company for one year, and until other officers shall be duly chosen; and may make such by-laws, rules and regulations, not inconsistent with the laws of this territory, as shall be necessary for the well-ordering of the affairs of said company; *provided*, that each person shall be entitled to one vote for every share not exceeding ten, and two votes for every five shares above ten and not exceeding forty; but no stockholder shall be entitled to more than twenty-six votes.

Duty of the president and managers.

SEC. 4. That the president and managers first chosen shall procure printed certificates for all the shares of the stock of the said company, and shall deliver one such certificate, signed by the president and countersigned by the treasurer, and sealed with the seal of the corporation, to each subscriber, for the share or shares held by him, on paying to the treasurer the amount of such share so held, which certificate shall be transferable at his pleasure, in person or by attorney, in the presence of the president or treasurer; and the assignee, holding such certificate, having first caused the assignment to be entered on the books of the company kept for that purpose, shall become a member of the corporation.

Times of meeting, how governed.

SEC. 5. That the president and managers shall meet at such times and places, and be convened in such manner, as shall be agreed on for transacting their business, and at such meeting five members shall be a quorum, who, in the absence of the president, may choose a chairman, and shall keep minutes of all their transactions entered into a book.

Bridge not to interfere with navigation.

SEC. 6. That said bridge shall be so constructed as not to interfere with the navigation of the river, or the passing of steamboats on the Kansas river.

Of stockholders

SEC. 7. That if any stockholder, after thirty days' notice given in two papers of Kansas territory, and the like number in the state of Missouri, of the time and place of paying any instalments which may be called for, shall neglect to pay such instalments for the space of sixty days after the time so appointed, every such stockholder or asignee shall, in addition to the instalment so called for, pay at the rate of two per centum per month for every delay of such payment; and if the same and additional penalties shall remain unpaid for such a space of time that the accumulated penalties shall become equal to the sums before paid on account of such shares, the same shall be forfeited to the said company, and may be sold to any person or persons and for such price as can be obtained therefor.

Duties of the president and managers.

SEC. 8. That the president and managers of the said company shall keep fair and just accounts of all moneys received by them from said commissioners and from the subscribers to the said company, and of all penalties in the delay of the payment of stock, and the amount of profits on shares that may be forfeited as aforesaid, and also all moneys by them expended in the prosecution of said work, and shall, at least once in each year, submit such accounts to a general meeting of the stockholders until the said bridge shall have been completed, and until the costs, charges and expenses of effecting the same shall have been fully paid and discharged, and the aggregate amount upon such liquidation; or, whenever the said stock of the said company shall be nearly expended, it shall be found that the capital stock is not sufficient to complete the said bridge according to the true intent and meaning of this act, it shall and may be lawful for the president, managers and company, at a stated or special meeting, to be convened according to the provisions of this act or their own by-laws, to increase their number of shares to such extent as shall be deemed sufficient to accomplish the work, and to demand and receive the moneys subscribed for such additional shares in like manner and under like penalties as is hereinbefore provided for the original subscription.

To keep just and true accounts of the finances.

SEC. 9. That the president, managers and company shall keep a just and true account of all moneys received by the several collectors of toll for crossing the said bridge, and declare a dividend of the profits and income thereof among all the stockholders, deducting therefrom all contingent costs and charges, and such proportions of the said income as may be deemed necessary for a growing fund, to provide against the decay and for the re-building and repairing of said bridge; and shall, on the first Monday of April and October, in every year, publish the dividend of the said clear profits thereof among the stockholders, and give notice of the time and place, in at least two papers published nearest to the said bridge, when and where the same will be paid, and shall cause the same to be paid accordingly; and the president and managers of the aforesaid company shall, annually, on the first Monday of December, transmit to the auditor general a full statement of their affairs under oath.

Injury sustained, how punished.

SEC. 10. That any person or persons who shall wilfully injure, break or throw down any gate which shall have been erected on said bridge pursuant to the provisions of this act, or wilfully injure or spoil any part of such bridge or any thing thereto belonging, or shall drag along or across any log, timber, wood or stone so that the same shall injure the even surface of said bridge, he or they shall for every such offence forfeit to the corporation hereby created the sum of five dollars in addition to the real damage from this wrongful act, which penalty may be recovered by the said corporation in an action of debt in any court having cognizance thereof, and a separate suit may be in like manner prosecuted and maintained by such incorporationf or such damages done to the said bridge.

Obstructions on said bridge, how punished.

SEC. 11. That if any person or persons shall wilfully or maliciously remove or destroy any of the company's constructions, or place designedly and with evil intent any obstruction on said bridge, so as to injure or jeopard the lives of persons traveling on the same, such person or persons so offending shall be deemed guilty of a misdemeanor, and shall be adjudged on conviction to be imprisoned for a term of not more than two years; *provided*, that nothing herein contained shall prevent the said company from pursuing the remedy heretofore specified for damages done their bridge by the wrongful act.

Of suits or actions.

SEC. 12. That in all suits or actions brought against said company, the service of process on any director, toll-gatherer, or other officer of the company, shall be good and valid in law as if made on the president thereof.

Extension of bridge.

SEC. 13. That said bridge is to extend from Lecompton to the opposite shore at any point most favorable.

Liable to pay damages, when

SEC. 14. That if the party or parties holding the charter granted by this act shall obstruct the navigation of the said river of Kansas, or shall in any way interfere with the navigation thereof with flats or steamboats, or rafts, or any other floating craft upon said river, they shall thereby forfeit the charter herein granted, and shall be liable to forfeit and pay to the party or parties so damaged the full amount of such damages.

Parties injured to sue.

SEC. 15. That it shall be lawful for any person, party or parties so injured by the obstruction of the navigation of the said river of Kansas to recover the damages against the said bridge company at a suit at law.

Powers of the company.

SEC. 16. The said company shall have power to ask, demand and receive pay from every person who shall cross said bridge, for all wagons, carriages and other vehicles, and for loose stock of every description; *provided*, that the tribunal transacting county business for the county in which the town of Lecompton is or may be situated, shall from time to time prescribe the rates of toll to be charged at said bridge, which shall be kept posted up at said bridge, and any charge made by said company exceeding the rates so prescribed shall work a forfeiture of all their privileges under this act.

This act to take effect and be in force from and after its passage.

CHAPTER 81.

An act to incorporate the City of Kickapoo.

§ 1. Boundaries of Kickapoo City.
2. Corporate powers, how vested.
3. Qualifications for councilmen.
4. May appoint president and other officers; quorum.
5. Stated meetings.
6. Of the mayor.
7. Qualifications for mayor.
8. To fill all offices not otherwise provided for.
9. Vacancy in office, who to act.
10. Powers of mayor and councilmen.
11. May regulate, pave, improve streets, &c.
12. Mayor to approve all laws, &c.
§ 13. Style of the laws of the corporation.
14. To appoint city register, &c.
15. To take an oath of office.
16. Of general election.
17. Who declared electors.
18. Assessor to be elected.
19. Constable to be elected.
20. Of real estate, to be sold.
21. Duty of mayor and councilmen.
22. Of compensation.
23. Power to organize fire companies, &c.
24. Mayor to have exclusive jurisdiction, when.
25. First election, when held.
26. Compensation of councilmen.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Boundaries of Kickapoo city.

Section 1. That the City of Kickapoo be and is hereby incorporated with the following designated boundaries: Beginning on the Missouri river, north of Ellis' ferry house, running south two hundred and twenty yards; thence west two hundred and sixty-nine and a half yards; thence south a half a mile; thence east two hundred and sixty-nine and a half yards; thence south three-eighths of a mile; thence east a half-mile; thence north to the Missouri river; thence up the river to the place of the beginning.

Corporate powers, how vested.

Sec. 2. The corporate powers and duties of said city shall be vested in a mayor and councilmen, who shall be chosen and appointed as hereinafter directed; the board of councilmen shall consist of seven members, who shall be elected by the qualified voters of said city.

Qualification for councilmen.

Sec. 3. The councilmen chosen, as provided for in the preceding section, shall be at least twenty-one years old, citizens of the United States, and inhabitants of the said city for three months next preceding their election; and whenever there shall be a tie in the election of said councilmen, it shall be determined by the judges of the election by lot, and all vacancies shall be filled by election as aforesaid, in such manner as shall be provided by ordinance.

May appoint president and other officers.

Sec. 4. The board of councilmen shall appoint their president and all other officers of their board; shall judge of the qualifications, elections and returns of their own members; a majority of the whole number shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the board may provide; they may determine the rules and regulations of their proceedings, punish their members for disorderly conduct, and by a concurrence of two-thirds of their whole number expel a member, but not a second time for the same cause; and they shall at any time, upon the request of any member, cause the yeas and nays to be called and entered upon their journal.

Quorum.

SEC. 5. The stated meetings of the board of councilmen shall be on the first Mondays in October, January, May and August, in each year, at which time they may adjourn from day to day; but they may be convened at any other time at the discretion of the mayor; *provided*, however, that the mayor and board of councilmen may by ordinance alter the time of holding their stated meetings.

Stated meetings.

SEC. 6. The mayor shall be elected by the qualified voters of the city, shall hold his office for the term of one year, and until his successor is duly elected and qualified; and when two or more persons shall have an equal number of votes for mayor, or when any election shall be contested, it shall be determined by the board of councilmen.

Of the mayor

SEC. 7. The mayor shall be at least twenty-one years of age, and a citizen of the United States; shall have resided in said city at least three months next preceding his election, and be otherwise qualified as in case of councilmen.

Qualifications for mayor.

SEC. 8. The mayor and councilmen shall have power to fill all offices within the city which are not ordered by law or ordinance to be otherwise appointed or elected; the mayor shall take care that the laws of the territory and the ordinances of the corporation are duly enforced, respected and obeyed within the limits of said city; he shall have power, with the consent of the board of councilmen, to remove from office any person holding office created by ordinance; to remit fines and forfeitures; to grant reprieves and pardons in any case arising under ordinance of the corporation; he shall be a conservator of the peace within the city; shall have power to fill all vacancies which may happen in any office (other than that of councilmen) until the end of the session of the board, which shall occur next after such vacancy; shall from time to time give to said board of councilmen information in relation to the selection of officers of the city, and shall recommend to their consideration such measures as he shall deem expedient for the welfare of said city; may, on extraordinary occasions, convene the board of councilmen by proclamation, stating to them when

To fill all offices not otherwise provided for.

assembled the object for which they were convened, and shall receive such compensation for his services as mayor as may be provided for by ordinance.

Vacancy of office, who shall act.

SEC. 9. When any vacancy shall happen in the office of mayor, by death, resignation, absence from the city, removal from office, refusal to qualify or otherwise, the president of the board of councilmen, for the time being, shall exercise the office of mayor until such vacancy shall be filled, and during that time he shall receive the same compensation as the mayor would have been entitled to; and in case of vacancy as aforesaid, other than a temporary absence from the city, the person exercising the office of mayor shall cause a new election to be had, giving ten days' notice thereof by proclamation.

Powers of mayor and councilmen.

SEC. 10. The mayor and board of councilmen shall have power, by ordinance, to levy and collect taxes not exceeding half of one per centum upon real and personal property within the city, for the purpose of improving said city and paying the expenses of the government of said corporation; to prevent and remove nuisances; to establish night watches and patrols; to erect lamps in the streets and light the same; to provide for licensing, taxing and regulating wagons, carts, drays, pawnbrokers, venders of lottery tickets, retailers, ordinaries and taverns, hackneys, carriages, money-changers and peddlers, theatrical and other shows and amusements; to restrain and prohibit gaming and gaming houses, billiard tables and ten-pin alleys; to prevent riots and disturbances to the citizens; to prevent or restrain the meeting of slaves; to prevent the firing of fire-arms; to prevent the furious and unnecessary running, galloping, or driving of any horse or mule in the said city; to prevent and suppress bawdy houses or other disorderly houses within the limits of said city, and impose penalties therefor; to establish and repair bridges; to establish and regulate markets; to open, alter, close and keep in repair streets, alleys, avenues, sewers and drains, and keep the same cleared and opened; to provide the city with water; to provide for regulating and safe-keeping standard weights and measures, to be used in the city; to regulate the cleaning of chimneys and the fees therefor; to provide for the prevention and extinguishment of fires; to regulate the size of brick to be made and used in the city; to provide for the inspection of lumber and other building materials to be used therein; to regulate and order the building of parapet walls and partition fences; to regulate the inspection of butter, lard, wood, coal, and the weight and quality of bread; the storage of gunpowder, tar, pitch, rosin, hemp, cotton and other combustible materials; to erect pumps in the streets or other places for the convenience of the inhabitants; to regulate the police of the city; to regulate the election of city officers and fix their compensation, and, from time to time, pass such ordinances to carry into effect the objects of this act, and the powers hereby granted, as the welfare of the inhabitants may require; and to impose and appropriate fines, penalties and forfeitures for the breach of any ordinance, and provide for the execution and collection thereof; *provided*, that no tax shall be laid on the wearing apparel, necessary tools or implements of any person used in carrying on his trade, nor shall the same be subject to sale of distress for taxation.

May regulate, pave and improve streets, &c.

SEC. 11. The mayor and councilmen shall have power to regulate, pave and improve the streets, avenues, lanes, alleys and side-walks within said city; and to extend, open and widen any street, avenue, alley or sewer, at their discretion, at any place in said city; making, however, to the person or persons whose property may be injured thereby, adequate compensation therefor; to ascertain the amount of which, the mayor in all such cases shall cause to be summoned twelve good and lawful men, who shall be inhabitants of the county in which said city shall be situated, but who shall not reside in said city, and who are not directly interested, who (being by him first duly sworn) shall inquire into and take into consideration as well the benefit as the injury which may occur, and estimate and assess the damages which would be sustained by reason of the opening, extension, widening or altering any street, avenue, alley or sewer; and shall, moreover, estimate the amount which other persons will be benefited thereby, particularly designating such persons, and the respective amounts in which they will be each benefited, (all of whom shall contribute their proportionate amount for the purpose of compensating the person or persons injured thereby,) all of which shall be returned to the mayor, under their hands and seals, within five days from the time they shall have been sworn as aforesaid; and the person or persons who shall be returned so benefited and so assessed shall pay such amount, and the collection of the same shall be enforced in such manner as shall be provided for by ordinance, and the residue, if any, shall be paid out of the city treasury; *provided, however*, that any person interested shall have the right to appear before the jury aforesaid, by himself or agent, and he and his witnesses shall be heard before the verdict is rendered; and any person considering himself aggrieved by said verdict, may, any time within ten days after the same is returned to the mayor as aforesaid, apply to him for an appeal to the probate court of the county in which said city may be situated, which shall be granted by the mayor as aforesaid, who shall make out a full and perfect transcript of all the proceedings and papers, and file the same in the office of the clerk of said court within five days after such appeal is granted: and the first term of the said court thereafter, if it be ten days from the filing of said papers until the first day of said term; if not then, the first term thereafter, said cause shall be tried anew and as other appeals. The fact of any juror residing within said city shall be good cause for challenge by any party interested in said cause.

Mayor to approve all laws, &c.

SEC. 12. Any bill which shall have passed the board of councilmen, shall, before it becomes a law, be presented to the mayor for his approval; if he approves it, he shall sign it; if not, he shall return it to the board with his objections, who shall reconsider the same; and if, after such reconsideration, a majority of the whole number shall pass the bill, it shall become a law; and in all such cases, the yeas and nays shall be entered on the journal. If any bill shall not be returned to the board within three days after it has been delivered to the mayor for his approval, the same shall become a law as fully as if he had signed it.

Style of laws of corporation.

SEC. 13. The style of the laws of the corporation shall be, "Be it ordained by the mayor and councilmen of the city of Kickapoo," and all ordinances shall be, within one month after they are passed, published in some newspaper published in said city, or by twelve printed handbills posted in as many public places in said city.

To appoint city register, &c.

SEC. 14. The mayor and board of councilmen shall appoint a city register, who shall hold his office for one year, and until his successor is appointed and qualified, unless he is sooner removed; who, before he enters upon the discharge of his duties, shall take and subscribe to the oath hereinafter prescribed, and shall moreover give bond with sufficient security, to be approved by the mayor, conditioned for the faithful discharge of the duties of his office; he shall perform all the duties of the clerk of the board of councilmen; shall keep a book or books wherein shall be entered all the proceedings of the board and all the records of the corporation, which book shall, at proper times, be open for the inspection of the citizens; and he shall have and preserve in his office all records, public papers and documents belonging to the city, and shall perform such other duties as may be enjoined on him by ordinance.

To take an oath of office.

SEC. 15. The mayor, and each of the councilmen, and every other officer of the corporation, shall, before entering upon the duties of their respective offices, take an oath or affirmation, before some judge or justice of the peace, to support the constitution of the United States, the principles and provisions of the law of congress organizing the territory of Kansas, and faithfully demean himself in office.

SEC. 16. A general election for corporation officers shall be held on the first Monday in September next, in said city, in such manner as shall hereafter be provided.

Of general election.

SEC. 17. All free white male inhabitants of the age of twenty-one years shall be entitled to vote at this election, and at all elections the vote shall be given *viva voce*.

Who are declared electors.

SEC. 18. At a general election for the officers of the city there shall be elected an assessor, who shall, at the time of his election, possess the same qualifications as are required of councilmen, and the duties of assessor shall be prescribed by ordinance.

Assessor to be elected.

SEC. 19. At each general election of the officers of the city there shall be elected a city constable, who, at the time of his election, shall possess the same qualifications as are required of councilmen, who, before entering upon the discharge of the duties of his office, shall take the oath prescribed by this act and enter into bond to the corporation, with two or more securities to be approved of by the mayor, conditioned for the faithful discharge of the duties of his office, which bond shall be deposited in the office of city register, and by him recorded; and said constable shall possess the powers and perform the same duties of constable in his township, in the limits of said town or city, and shall execute and return all process which may be issued by the mayor or any justice of the peace of the city, which may be delivered to him, and shall perform such other duties as may be prescribed by ordinance; and he shall be entitled to the same fees as constables are entitled to for similar services.

Constable to be elected.

SEC. 20. When any real estate shall be advertised for sale or shall have been sold for taxes by the authority of the corporation, the owner or owners thereof may within two years thereafter redeem the same, by paying the purchaser the amount of the purchase money and all taxes subsequently paid, and all costs due thereon, together with fifteen per centum per annum on the same.

Of real estate to be sold.

SEC. 21. It shall be the duty of the mayor and the board of councilmen, and they shall cause to be published, annually, in some newspaper printed in said city, or by twelve written or printed handbills posted up at as many public places in said city, a full and complete statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended; said publication to be made within one month of each annual election, and at least two weeks before said election shall take place.

Duty of mayor and council.

SEC. 22. The mayor, constable, city register, assessor, and all other officers except councilmen, shall receive such compensa-

Of compensation.

tion of fees for their services as shall be prescribed by the board of councilmen.

Power to organize fire companies, &c.

Sec. 23. The mayor and board of councilmen shall have power to organize and establish fire companies in said city, and the members thereof shall be exempt from militia duty in time of peace.

Mayor to have exclusive jurisdiction, &c.

Sec. 24. The mayor shall have exclusive jurisdiction of all cases arising under this act of incorporation and under all the ordinances of the city.

First election, when.

Sec. 25. The first election for mayor, councilmen and other officers of the said city of Kickapoo, shall take place under the control of E. S. Wilhite, Wm. Eliot and Dupey Snell, who are hereby appointed to act as judges of said election, and empowered to appoint a suitable person to act as clerk, and to do and perform all things necessary to be done in the conducting of such election as they may think just and right.

Compensation of councilmen.

Sec. 26. The councilmen shall receive one dollar and fifty cents per day for every day they are in session, for the first year after the first election; but the councilmen shall fix the *per diem* for the next sessions of the next year; *provided*, that the said councilmen shall not sit more than three days at any one time or session, unless ordered by the mayor. This act shall take effect and be in force from and after its passage.

CHAPTER 82.

An act supplemental to an act entitled "an act to incorporate the City of Kickapoo."

§ Powers of the corporation.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Power of corporation.

Section 1. The corporation created by the act entitled "an act to incorporate the City of Kickapoo," shall have power to purchase and hold, or to enter by pre-emption or otherwise, any quantity of land where the City of Kickapoo is now located, not to exceed six hundred and forty acres.

This act to take effect and be in force from and after its passage.

CHAPTER 83.

An act to incorporate the City of Lecompton.

ARTICLE I.

§ 1. Inhabitants deemed a body corporate.
2. Limits and bounds.
3. Powers of council.
4. The inhabitants of said city can sue and be sued, &c.
§ 5. Shall have power by ordinance to establish municipal laws.
6. Enacting clause of all ordinances.
7. Ordinances in force at the time of the passage of this shall remain in force.
8. Qualification of voters.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Inhabitants declared a body corporate.

SECTION 1. The inhabitants of the town of Lecompton, included within the limits hereinafter described, in the county of Douglas and territory of Kansas, are hereby declared a body corporate and politic by the name and style of the City of Lecompton, and by that name shall have perpetual succession and a common seal, which they may change and alter at pleasure.

Limits and bounds.

SEC. 2. The following shall be the corporate limits of said town to wit: Commencing in the middle of the Kansas river, at a point which shall be designated by the surveyor now engaged in laying out and platting said town site, thence running in such manner as shall be designated by said surveyor throughout the entire limits of the said town or city.

Powers of council.

SEC. 3. That the city council of the city of Lecompton shall have power to extend the corporate limits of the city over any addition to said city not included in the present limits, whenever a majority of the inhabitants of said addition shall petition to the city council for that purpose; *provided*, however, that it shall first be submitted to a majority of the citizens of the city, and if the majority be in favor of receiving said addition, then the same shall become annexed to the city, form a part of the corporate limits thereof, and the inhabitants and property thereon shall be thereafter entitled to all the rights and benefits of other inhabitants and property within the city; and shall also be liable to assessments and taxation for city purposes as if such territory were originally included.

Proviso.

The inhabitants can sue and be sued.

SEC. 4. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal, within the city limits, and beyond the corporate limits for burial grounds and other public purposes, for the use of

To purchase and hold real and personal property, within the limits of the city.

Shall improve, &c.

the inhabitants of said city, and again to improve, lease or sell the same for the use of the inhabitants aforesaid, and the general prosperity of the city; to protect and improve all public grounds and landings on the river; to hypothecate or mortgage any real estate of the city, and borrow money on the public faith thereof, and to do and perform all such matters and things in relation to the property of the city as natural persons could lawfully do.

Shall have power by ordinance to establish municipal laws.

SEC. 5. The inhabitants of said city, by the name and style aforesaid, shall have power to provide and establish by ordinance all necessary organic and municipal laws, rules and regulations, for the government of the inhabitants and enforcing the same, and the same again to alter, change or repeal, at pleasure; and shall retain all the rights and privileges which they have heretofore possessed by virtue of the provisions of the original town charter, and particularly the right to, and control over all public streets, public grounds, public landings on the river, and ferry privileges, to the exclusive use of the city, and within the corporate limits, as herein set forth and described.

Enacting clause of all ordinances.

SEC. 6. The enacting clause of all ordinances shall be, "Be it ordained by the city council of the city of Lecompton," and all ordinances shall be published in such manner as may be provided by ordinance prescribing the same, and no ordinance shall be enforced until so published.

Ordinances in force at the passage.

SEC. 7. All ordinances in force at the passage of this act shall continue in force until duly altered, changed or repealed.

Qualification of voter.

SEC. 8. All free white male citizens who have arrived to the full age of twenty-one years, and who shall be entitled to vote for territorial officers, and who shall have resided within the city limits at least six months next preceding any election, and moreover who shall have paid a city tax or any city license according to ordinance, shall be eligible to vote at any ward or city election for officers of the city.

ARTICLE II.

§ 1. City council shall consist of, &c.
2. First meeting.
3. If the mayor shall remove from the city, his office to be vacated.
4. Council shall judge of the qualification of its own members.
5 Quorum to do business.
6. Council shall have power to prescribe its own rules.
§ 7. Council shall keep a journal of all proceedings.
8. No councilman shall be appointed to office during his term.
9. How vacancies shall be filled.
10. Shall take an oath.
11. When a tie in election occurs, how to proceed.

City council shall consist of.

SECTION 1. There shall be a city council, consisting of a mayor and board of council, and which board shall consist of not less than six nor more than ten members of councilmen, one-half to be chosen by the qualified voters of the city annually, and they shall serve two years, and until their successors are elected and qualified.

First meeting. Shall be divided into two classes.

SEC. 2. At the first meeting of the city council, the councilmen shall be divided by lot into two classes; the seats of those of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half of the board shall be elected annually.

When the mayor's office to be vacated

SEC. 3. If the mayor shall remove from the city, or any councilman shall remove from his ward for which he was elected, his office shall be thereby declared vacated.

Shall judge of the eligibility of its own members.

SEC. 4. The city council shall judge of the qualifications, elections and returns of their own members, and shall determine all contested elections.

Quorum to do business. Power to compel attendance.

SEC. 5. A majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall have power to compel the attendance of absent members under such penalty as may be provided by rules for their own government.

Shall have power to prescribe rules

SEC. 6. The city council shall have power to determine the rules of its proceedings, punish disorderly conduct, and, with the concurrence of two-thirds of its members, to expel any member.

Shall keep a journal.

SEC. 7. The city council shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays, when demanded by any member, shall be entered on the journal.

Shall not be appointed to office.

SEC. 8. No councilman shall be appointed by the city council to any office under the authority of the city during the time for which he was elected.

Vacancies shall be filled.

SEC. 9. All vacancies in the board of city council shall be filled by election by the people.

Shall take an oath

SEC. 10. The mayor and each member of the city council, before entering on the duties of their office, shall take and subscribe an oath that they will support the constitution of the United States and the territory of Kansas, and faithfully comply with the provisions of this charter, and well and truly perform the duties of their office impartially, and to the best of their skill and abilities.

Proceedings when a tie in election occurs.

SEC. 11. When there shall be a tie in the election of councilmen, the judges of the election shall certify the facts to the mayor, who shall determine the same by lot; such member elected shall be so declared; *provided*, that for any other cause of contest, the city council shall determine and declare which candidate is elected, and he shall have the seat.

ARTICLE III.

§ 1. Who the permanent officers shall be.
§ 2. Eligibility of members and officers.

Permanent officers.

SECTION 1. The permanent officers of the city shall be a mayor, city council and clerk, recorder, marshal, assessor, treasurer, city attorney and street commissioner; all of whom shall be elected or appointed, as hereinafter provided, at the first annual and every succeeding general election for city officers.

Eligibility of members and officers.

SEC. 2. No person shall be eligible to be elected or appointed to any of the enumerated offices unless he be a free white man over the age of twenty-one years, have resided within the city one year next preceding his election or appointment, and moreover have paid a city tax or license within the year previous to such election or appointment; and all officers so elected or appointed shall hold their office for one year, except councilman as above provided, and the mayor, who shall be elected for the term of two years, and until their successors shall be duly elected or appointed according to law and the provisions of any ordinance or ordinances touching such elections or appointments and qualifications, unless sooner removed in such manner and for such offences as may be prescribed by ordinance.

ARTICLE IV.

Of the mayor, his powers and duties.

§ 1. Duties of mayor.
2. Shall superintend all officers and affairs.
3. He shall sign commissions.
4. Shall be conservator of the peace.
5. Shall communicate information concerning the wants of the city.
6. Shall have power to call special meetings.
7. Can compel any city officer to exhibit his accounts.
§ 8. Compensation of.
9. Shall enforce all laws.
10. Return of the election of mayor.
11. Should the office of mayor become vacant.
12. Shall be liable to indictment.
13. Can call out the inhabitants to enforce the law.
14. Can remit fines.

Mayor's duties.

SECTION 1. The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council shall be equally divided, and none other; he shall sign all bills before they shall become ordinances, but may refuse or decline to sign any bill which he may deem inexpedient or in violation of any provision of this charter, and, upon such refusal, shall, at or before the next regular meeting of the board after the passage of such a bill, return the same with his objections thereto, in writing; thereupon the said board shall reconsider said bill and dispose of it by yeas and nays, entered upon their journal; if they should repass it, it shall become an ordinance and be enforced, whether the mayor shall sign it or not; otherwise it shall not become an ordinance.

SEC. 2. He shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and this charter are enforced and complied with.

Superintend all officers and affairs.

SEC. 3. He shall sign the commissions or appointments of all the officers elected or appointed in the city government.

Shall sign commissions.

SEC. 4. He shall be a conservator of the peace throughout the city, and for this purpose may appoint or dismiss at pleasure any number of extra policemen, as he may deem proper, and all such acts he shall report to the city council.

Shall be conservator of the peace.

SEC. 5. He shall from time to time communicate to the city council such information and recommend such measures as in his opinion may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city.

Shall communicate information concerning the wants of the city.

SEC. 6. The mayor or any two councilmen shall have power to call special meetings of the city council, the object of which shall be submitted to the board in writing; and the call and object, as well as the disposition thereof, shall be entered upon the journals by the clerk.

Shall have power to call special meetings.

SEC. 7. The mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his account book or other papers, and to make report to the mayor and city council, in writing, touching any subject or matter he may require pertaining to his office.

Can compel any city officer to exhibit his accounts.

SEC. 8. The mayor shall receive from time to time such compensation for his services as may be fixed by ordinance; *provided*, that his salary shall not be increased or diminished during his term of office.

Compensation of.

SEC. 9. The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of said city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty; he shall have such jurisdiction as may be vested in him by ordinance over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulations thereof.

Shall enforce all laws.

SEC. 10. At the first meeting of the city council after any general election, the board of the city council shall cause to be made out, and certified by their clerk, the election and qualifica-

Return of the election of mayor.

tion of the mayor, and within twenty days thereafter he shall cause the same to be recorded in the recorder's office of the county in which the city is, and a neglect to qualify and record shall be deemed a refusal to accept; and the mayor shall be authorized to administer oaths, to take depositions and acknowledgments of deeds, mortgages, and all other instruments of writing affecting the titles of land in this territory, and certify the same under the seal of the city, which shall be received as good and valid throughout the territory.

Should the office of mayor become vacant.

Sec. 11. If the office of mayor at any time, from any cause become vacant, or if the person elected mayor at any election shall neglect or refuse to qualify according to law, it shall be the duty of the council to elect one of its own members chairman *pro tem.*, who shall have all the power and perform all the duties of mayor during such vacancy, and such chairman shall immediately order an election for the office of mayor to be held within ten days after such order is made.

Shall be liable to indictment.

Sec. 12. For any wilful and corrupt violation of duty or omission to discharge his duty, in fraud of the city, the mayor shall be liable to indictment, as for a high misdemeanor, in the Lecompton circuit court or other tribunals to which any citizen of the city of Lecompton is amenable for criminal offences, and upon conviction shall be fined in any sum not exceeding one hundred dollars, and moreover his office as mayor shall thereby, as also for the conviction of any felonious crime, become vacated.

Call out the inhabitants to enforce the laws.

Sec. 13. The mayor is hereby authorized to call on every male inhabitant over eighteen years of age to aid in enforcing the laws and ordinances, and in case of riot to call out the militia to aid him in suppressing the same or carrying into effect any law or ordinance, and any person who shall not obey such call shall forfeit to said city a fine not exceeding five hundred dollars.

Can remit fines.

Sec. 14. The mayor shall have power to remit fines and commute imprisonment for labor, or labor for imprisonment, on such terms as he shall deem proper, as may be provided for by ordinance.

ARTICLE V.

§ 1. Council shall have power to levy and collect taxes.
2. Shall have power to impose a poll-tax.
3. Shall have power to collect a license tax.
4. To restrain tippling-shops.
5. Shall have power to appoint clerks, &c.
6. To require all officers to give bond.
§ 7. Shall have power to borrow money.
8. To appropriate money.
9. To prevent the introduction of contagious diseases.
10. To erect, establish and regulate hospitals.
11. To make regulations to secure the general health of the city.

§ 12. To open and widen grades.
13. To open alleys.
14. To divide the city into wards.
15. To establish night watches.
16. To erect market houses.
17. To provide for improving public grounds.
18. To improve and preserve the navigation of the Kansas river.
19. To provide against fires.
20. To regulate the storage of gunpowder
21. To prevent the erection of wooden buildings.
22. To provide for the inspection of all kinds of produce.
23. To provide for the inspection of lumber.
§ 24. To increase the number of councilmen.
25. To provide for taking the number of inhabitants.
26. To provide by ordinance for the election of city officers.
27. To provide for removing officers.
28. To regulate the police of the city.
29. Council to pass ordinances to carry out the charter.
30. Ordinances to conform to the rules of the council.
31. Power of council; of slaves.
32. Provide for certificate and city seal.
33. Shall publish a statement of all money received.

Shall have power to levy and collect taxes.

SECTION 1. The city council shall have power to levy and collect taxes upon all real and personal property within the limits of the corporation, not to exceed one-half of one per cent. upon the assessed value thereof, in any manner to be previously provided by ordinance, not repugnant to the constitution of the territory of Kansas; and, *provided further*, that upon a petition of a majority of the resident tax payers on real estate within the corporate limits of the city for that purpose, the city may levy and collect a special tax of not exceeding one per cent. per annum on such real estate, to be appropriated to the subscription and payment for the improvement of roads leading into the city, and promoting the trade and commerce thereof.

Shall have power to assess poll tax.

SEC. 2. The city council shall have power to impose a poll tax, which shall never exceed one dollar, on all able-bodied male persons over the age of twenty-one and under fifty years of age.

Power to levy and collect a license tax.

SEC. 3. To levy and collect a license tax on auctioneers, merchants, grocers, confectioners, taverns, hawkers, peddlers, dram-shops, liquor sellers, shows and exhibitions for pay, ball and ten-pin alleys, hacks, drays, wagons and other vehicles within the city for pay, theatres, theatrical exhibitions for pay, and to regulate their charges and duties.

To restrain and prohibit tippling-shops.

SEC. 4. To restrain, prohibit and suppress tippling-shops, billiard tables, ten-pin alleys, ball alleys, and bawdy and other disorderly houses and practices; and also to regulate and prohibit, if deemed proper, the sale of spirituous liquors within the city.

Shall have power to appoint certain officers.

SEC. 5. The city council shall have the power to appoint their clerk, street commissioner, auditor, treasurer, assessor, and all such other officers and servants as may be necessary and not herein after provided for, and to prescribe their duties.

Require bonds and security of all officers.

SEC. 6. To require from all officers and servant selected or appointed in pursuance of this charter, bonds and security, with suitable penalties for the faithful performance of their duties; also to take an oath for the faithful performance of their respective offices, before entering on the discharge of the same.

Council shall have power to borrow money.

Sec. 7. The city council shall have power to borrow money on the credit of the city, and pledge the revenue and public property of the city for the payment thereof; *provided*, that there shall not be paid, directly or indirectly, a greater rate of interest than ten per cent. per annum, unless two-thirds of the qualified voters of said city, at a poll to be opened for that purpose, shall instruct the payment at a greater rate.

To appropriate money.

Sec. 8. To appropriate money and provide for the payment of the debts and expenses of the city.

To prevent the introduction of contagious diseases.

Sec. 9. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose, and enforce the same within five miles of the city.

Establish hospitals.

Sec. 10. To erect, establish and regulate hospitals and workhouses and poorhouses, and provide for the government and support of the same.

Health; water.

Sec. 11. To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water.

To open, widen, grade, &c.

Sec. 12. To open, widen, grade or otherwise improve and keep in repair all roads leading into the city, within one mile of its limits.

Streets, &c.

Alleys.

Other improvements.

Sec. 13. To open, widen, alter, vacate, extend, establish, grade and pave the streets and side-walks, and to improve the same; to open and improve alleys, avenues and private roads within the city; *provided*, that in opening private alleys and roads, the party at whose instance the same is done shall pay the expenses thereof; and *provided further*, that such improvements, except in pursuance of an ordinance made and provided for that purpose, shall not be kept in repair by the city.

To divide the city into wards.

Sec. 14. To divide the city into wards not exceeding four, and to apportion their representation in the city council according to population.

Night watches.

Sec. 15. To establish, support and regulate night watches and patrols, and to provide for lighting the streets and the erection of lamp posts.

Market house.

Sec. 16. To erect and establish market houses and market places, and to regulate and govern the same, and to provide for the erection of all other useful and necessary buildings for the use of the city.

Public grounds.

Sec. 17. To provide for enclosing and to improve all public grounds belonging to the city, and for the regulation of the same.

Kansas river.

Wharves.

Sec. 18. To improve and preserve the navigation of the Kansas river within the corporate limits, and to erect, repair and regulate public wharves and docks, and to regulate the erection and repair of private wharves and of rates of wharfage thereat.

Provide against fires.

Sec. 19. To provide for the extinguishment of fires, and to organize and establish fire companies and provide for their government.

To regulate the storage of gunpowder.

Sec. 20. To regulate the storage of gunpowder and other combustible materials, and generally provide for the prevention of fires within the city.

To prevent the erection of wooden buildings.

Sec. 21. To regulate or prohibit the erection of wooden buildings in any part of the city.

Inspection of produce.

Sec. 22. To provide for the inspection of all kinds of produce, fuel, lumber and materials for building, and to define the weight and measure thereof, if sold or offered for sale within the city.

Inspection of lumber.

Sec. 23. To provide for the inspection and measurement of lumber and other building materials, and for the measurement of all kinds of mechanical work.

To increase the number of councilmen.

Sec. 24. To increase the number of councilmen and apportion representation according to population; *provided*, that not more than three members shall be added in one year, nor shall the number ever exceed ten.

To provide for the taking of the census.

Sec. 25. To provide for and cause to be taken the enumeration of the inhabitants.

Election of city officers.

Sec. 26. To provide by ordinance for the election of city officers, prescribing the manner of conducting the same and the returns thereof, and for deciding contested elections.

Provide for removing officers.

Sec. 27. To provide for removing officers of the city for misconduct, and for the appointment of officers, their duty and compensation, not provided for in this charter.

To regulate the police of the city.

Sec. 28. To regulate the police of the city, and to impose fines, forfeitures and penalties for the breach of any ordinance, and also for the recovery and collection of the same; and in default of payment, to provide for confinement in the workhouse or at labor in the streets, or both.

Council to pass all ordinances to carry out the provisions of the charter.

Sec. 29. The city council shall have power to pass all ordinances which may be necessary to carry any provision of this charter into effect, and also to pass any ordinance usual or necessary for the well-being of the inhabitants, as granted to any other incorporated city in this territory.

Ordinance to conform to rules of the council.

Sec. 30. All ordinances shall be passed pursuant to such rules and regulations of the board of the city council as that body shall provide; shall be published within thirty days there-

To be published in thirty days.

after; shall not be in force till published, and shall be revised and published, in book or pamphlet form, at least once in every five years.

Power over slaves.

Free negroes.

Gaming and gaming houses.

SEC. 31. The city council shall have power to pass ordinances, imposing fines, penalties and forfeitures on the owners and masters of slaves, suffered to go at large upon the hiring of their own time, or to act or deal as free persons; and further to tax, restrain, regulate and prescribe the terms upon which free negroes and mulattoes shall be permitted to reside within the city; to pass ordinances to tax, restrain, prohibit and suppress billiard tables, gaming, gambling and gambling houses.

City seal.

Evidence.

SEC. 32. All ordinances of the city may be proved by the certificate and city seal of the clerk, and when printed and published in book or pamphlet form, and purporting to be printed and published by authority of the city, shall be read and received in evidence in all courts and places, without further proof.

Publish statement of all money received.

SEC. 33. The city council shall cause to be published a full and complete statement of all money received and expended by the corporation during the preceding year, and on what account received and expended.

ARTICLE VI.

Of the duties of city marshal.

§ 1. Power of marshal.
2. Power to commit disorderly persons.
§ 3. Shall be collector of taxes.

Power of marshal.

Conservator of the peace, &c.

SECTION 1. The city marshal of the city of Lecompton, when duly elected and qualified, shall have power to serve all writs and process to him directed by the recorder, and shall have the same fees therefor as the constable; shall be a conservator of the peace; shall be vigilant and active in suppression of all riots, mobs and disorderly conduct in the city, and for this purpose may arrest suspicious or disorderly persons, and take them before the recorder for trial or examination, without process.

Power to commit disorderly persons.

SEC. 2. He shall have the power to commit disorderly persons to the workhouse, or other place of safe keeping, until trial or examination can be had, and shall do and perform all such acts as may be prescribed by ordinance.

Shall be collector of taxes

SEC. 3. He shall, by virtue of his office, be collector of the taxes and all revenues within the city, and shall give such bond and security for the performance of his duties, as marshal, as may be prescribed by ordinance; and shall, moreover, hold no other territorial, county or city office, nor act as deputy of such other officers, during the time which he shall hold the office of marshal.

Shall hold no other office.

ARTICLE VII.

Of recorder and his duties.

§ 1. Recorder.
2. Jurisdiction of.
3. He shall be a conservator of the peace.
4. Shall have powers of a justice of the peace.
5. Shall have jurisdiction to hear and determine all actions of personal property.
§ 6. Appeals may be taken.
7. Recorder shall be governed by the laws of the territory in all cases:
8. In case of vacancy by death or otherwise.

Recorder.

SECTION 1. At all regular elections of city officers, a city recorder shall be elected.

Jurisdiction of.

SEC. 2. The city recorder shall have exclusive jurisdiction of all cases arising under the charge of any ordinance of the city, not to exceed in amount the sum of one hundred and fifty dollars.

Shall be a conservator of the peace.

Power to issue process.

SEC. 3. He shall be a conservator of the peace, and his court shall always be open on every day in the week, except Sundays, to hear, try and determine all cases wherein a breach of any ordinance of the city is charged; and he shall have power to issue all necessary process to bring parties before him forthwith for trial.

Powers of a justice of the peace

SEC. 4. He shall have all the powers and jurisdiction, and perform the duties of justice of the peace, and shall receive the same fees for like services; *provided*, the recorder shall in no case have jurisdiction when the amount in controversy shall exceed one hundred and fifty dollars.

Jurisdiction in actions for personal property.

Marshal to serve process.

SEC. 5. He shall have jurisdiction to hear, try and determine all actions for the recovery of personal property, alleged to be unlawfully detained by any defendant, when the amount in controversy shall not exceed the sum of one hundred and fifty dollars; actions in such cases to be conducted after the rules governing such actions in the district court, the marshal in the city of Lecompton being hereby empowered to execute all process issued by the recorder in such actions in the same manner as sheriff, or in similar actions in the district court.

Appeals.

SEC. 6. Appeals may be taken from any final judgment of the recorder in like manner as the same are now taken from judgments of justices of the peace.

Laws of the territory.

SEC. 7. The recorder shall be governed and decide by the laws of the territory in all matters not provided for by ordinance or otherwise.

In case of vacancy by death or otherwise.

Sec. 8. In case of vacancy occurring in the office of the recorder by death, resignation or otherwise, or in case of sickness, absence, interest or disability of such recorder to perform his duties, it shall be the duty of any acting justice of the peace, residing within the city or township, to perform the same during such vacancy, disability or absence.

ARTICLE VIII.

Proceedings in special cases.

§ 1. When private property is taken.
2. Alley to be opened when petitioned for.
3. Persons empanneled to inquire into, &c.
4. Amount of compensation.
5. Mayor's powers to set aside.
6. Council shall have power to collect tax.
§ 7. Citizens are exempt from working on any road one mile from city.
8. Power to compel persons to work on streets.
9. Shall appoint officers to carry into effect this charter.

When private property is taken.

Section 1. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue or alley, the corporation shall make a just compensation therefor to the person whose property is so taken; and if the amount of such compensation can not be agreed upon, the mayor shall cause the same to be assessed by a jury of six disinterested persons, freeholders of the city.

Alleys to be opened when petitioned for.

Sec. 2. When all the owners of all the property on the street, lane, avenue or alley, proposed to be opened, widened or altered, shall petition therefor, the city council may open, widen or alter such street, lane, avenue or alley upon condition to be prescribed by ordinance; but no compensation in such case shall be made for opening, widening or altering of such street, lane, avenue or alley to those whose property shall be taken for the opening, widening or altering such street, lane, avenue or alley; nor shall there be any assessment of benefit or damage that may accrue thereby to any of the petitioners.

Persons empanneled to inquire into, &c.

Sec. 3. All persons empanneled to inquire into the amount of benefit or damage which shall happen to the owners of the property proposed to be taken for opening, widening or altering any street, lane, avenue or alley, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, signed by each juror.

Amount of compensation.

Sec. 4. In assessing the amount of compensation for property taken for opening, widening or altering any street, lane, avenue or alley, the jury shall take into consideration the benefit as well as injury happening by such opening, widening or altering such street, lane, avenue or alley.

Mayor's power to set aside.

Sec. 5. The mayor shall have power, for good cause shown, within ten days after any inquest shall have been returned to him as aforesaid, to set the same aside and cause a new inquest to be made.

Levy and collect tax.

Sec. 6. The city council shall have power, by ordinance, to levy and collect a special tax on the holders of the lots in any street, lane, avenue or alley, according to their respective fronts owned by them, for the purpose of curbing and paving the sidewalks, and lighting such street, lane, avenue or alley.

Power to levy and collect taxes.

Sec. 7. The mayor and city council shall have power, by ordinance, to direct the manner in which any property, real or personal, advertised for sale, or sold for taxes by authority of the corporation, may be redeemed.

Citizens exempt from working on roads one mile from city.

Sec. 8. The citizens of the city of Lecompton are hereby exempt from working on any road beyond one mile from the limits of the city, or from paying any tax to procure labor therefor, or for any county purposes ; and the city council shall, by ordinance, open and keep in good traveling repair all public roads which shall be deemed necessary for the public convenience within the said one mile.

Power to compel to work on streets, &c.

Sec. 9. The mayor and city council shall have power to require every able-bodied male inhabitant, between the age of twenty-one and fifty years, to labor or work at least two days in every year on the streets, lanes or avenues within the city, or roads leading into said city, within the mile aforesaid, under such rules and regulations as they may by ordinance prescribe.

To appoint officer to carry into e charter.

Sec. 10. It shall be the duty of the board of trustees of the present town of Lecompton to appoint officers for conducting an election, and carrying into effect the foregoing charter.

This act to take effect and be in force from and after its passage.

CHAPTER 84.

An act to incorporate the Central Railroad Company.

§ 1. Names of corporators; style.
2. Powers of the company.
3. May have right of way, &c.
4. Lands granted to company.
5. Capital stock of corporation.
6. Corporate powers, how vested.
7. Powers of president and directors.
8. May make by-laws, &c.
9. May hold and convey lands.
10. When right of way cannot be purchased, to make application.
§ 11. Judge to appoint commissioners; duties.
12. Party aggrieved may appeal.
13. When company may occupy, &c.
14. Punishment for obstructions, &c.
15. Map of road to be made.
16. Company authorized to organize, when.
17. City or county may take stock.
18. Subscriptions may be made in lands.
19. Company may issue bonds, &c.
20. When to commence operations.
21. Powers of the company.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Names of corporators.

Style.

SECTION 1. That John Calhoun, John Duff, Alexander Slearne, T. J. Carter, Albert S. White, A. Boody, S. A. Lecompte, S. D. Pitcher and Lewis M. Rees, with such other persons as may associate with them for that purpose, are hereby incorporated a body politic and corporate by the name of the "Kansas Central Railroad Company," and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in all courts and places; may make and use a common seal, and alter or renew the same; be capable of contracting and being contracted with, and are hereby invested with all the powers, privileges, immunities and franchises, and of acquiring by purchase or otherwise, and of holding and conveying real and personal estate which may be needful to carry into effect fully the purposes and objects of this act.

Powers of the company.

SEC. 2. The said company is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad, with one or more tracks, from any point on the Missouri river to any point on the western boundary of Kansas territory, with a branch to the northern boundary of said territory to a point or place where the Nebraska City and Marysville railroad shall cross the line dividing the territories of Kansas and Nebraska.

May have right of way, &c.

SEC. 3. The said company are hereby authorized, and shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, land not exceeding one hundred feet in width, through its entire length, upon such route as may be determined; and for the purposes of depots, side tracks, cuttings and embankments, for building engine houses and shops, or wood and water stations, may take more land, earth or material, as may be necessary for the construction or completion, operation, preserving and maintaining said road.

Lands granted to company.

SEC. 4. All such lands, materials and privileges belonging to this territory, or state hereafter, are hereby granted to such railroad for the purposes named in the previous section; and may construct said road on or across other railroads, common roads, rivers or streams which it may intersect; but said company shall restore said railroad, common road, river or stream thus intersected in sufficient manner not to materially impair its usefulness.

Capital stock of corporation.

SEC. 5. The capital stock of said corporation shall be one million of dollars, which may be increased from time to time to any sum not exceeding the amount expended on account of said road, divided into shares of one hundred dollars each, which shall be deemed personal property, issued and transferred as may be ordered by the directors or laws of said company.

Corporate powers, how vested.

SEC. 6. All the corporate powers of said company shall be vested in and exercised by a board of directors, and such officers and agents as they may appoint. The board of directors shall consist of thirteen persons, stockholders, at least three of whom shall be residents of Kansas, who shall be chosen annually by the stockholders, each share having one vote by person or proxy, and continue in office until their successors are elected and qualified. Vacancy in the board may be filled by a vote of two-thirds of the remaining directors.

Powers of president and directors.

SEC. 7. The president and directors for the time being are hereby empowered, or their officers or agents, to execute all the powers herein granted for the purpose of surveying, locating, constructing and operating said railroad and branches, and for transportation of persons, goods and merchandise, and authority of contract and management of the affairs, as may be necessary, to carry into effect the intent of this act.

May make by-laws, &c.

SEC. 8. The said company shall have power to make, ordain and establish such by-laws, rules and regulations deemed expedient for the objects and interests of the company; *provided*, they be not inconsistent with the laws of the United States or of this territory. They shall have power to establish such rates for transportation and collect the same, and matters and things respecting the use of said road, the transportation of persons or property, as may be necessary.

May hold and convey lands.

SEC. 9. It may be lawful for said railroad company, their agent or engineer, for the purpose of exploring, surveying or locating said road, to enter upon any land, doing no unnecessary damage, without the consent of the owner; and may acquire by release, donation or otherwise, any lands, and may hold the same or convey to others, or use the same in any manner deemed for the interest of said company.

When right of way cannot be purchased.

SEC. 10. If said company cannot obtain the right of way by purchase or otherwise, if the owners refuse to agree upon terms, or where the owner is unknown, non-resident, idiot, or under age, either party may make application to the judge of the district court where the lands are situated, upon notice posted ten days in some public place, asking the appointment of commissioners to appraise the damage to the lands required for the purpose of the road.

Judge to appoint commissioners.

SEC. 11. Upon such application being made to such judge, he shall appoint three disinterested persons to act as commissioners for the appraisal of all such damages, taking into consideration the advantages as well as any injury to the parties interested in such lands. Said commissioners shall, by public notice, appoint a time and place, and may adjourn, if necessary, for hearing the parties, and proceed to examine the lands, ascertain and determine the damages, if any, and under oath impartially and justly to appraise the lands necessary for the use of said company, and faithfully perform the duty to the best of their judgment and ability. They, or a majority of them, shall make up and sign the awards to the parties, embracing a description of the lands and amount of damages to each, and make a return of their doings to the judge of the district court. The commissioners making such appraisal shall be entitled to pay for their services, three dollars per day and ordinary traveling expenses, which shall be paid by said company.

Duty of commissioners.

Party aggrieved may appeal.

SEC. 12. If either party feel aggrieved by such appraisal or award, he may appeal within twenty days after such award is made known, by giving notice to that effect to the opposite party; otherwise both parties shall be bound by the award, and the amount shall be paid upon application of the persons entitled to receive the same. In case of appeal, a bond shall be filed for the costs in court, to be paid by the party who shall be entitled to pay the same, as determined by the court aforesaid.

When company may occupy, &c.

SEC. 13. In case of appeal or a disagreement in regard to the damages, the railroad company may occupy, for the purpose of construction of the road, by giving satisfactory security to the judge of said court for the ultimate payment of the damages so determined.

Punishment for obstructions, &c.

SEC. 14. If any person shall carelessly, wilfully or maliciously hinder, delay or obstruct the workmen or the passage of trains, or shall place any obstruction on the track, or in any manner injure or destroy any tools, cars or other property of said railroad, or pertaining to it, or aid or abet any person in commission of such trespass, all such persons shall forfeit and pay said company, agents and servants, treble the damages, as shall be proven by any court, and shall be liable to indictment and imprisonment for a term not exceeding five years, in the discretion of the court who shall try the same.

Map of road to be made.

SEC. 15. Said corporation shall, within reasonable time after said road or branches are definitely located, cause a map and profile to be made of the route of said road, and file the same in the office of the secretary of the territory.

Company authorized to organize, when.

SEC. 16. When fifty thousand dollars shall have been subscribed to the capital stock and ten per centum actually paid to the grantees herein named, and a certificate from a majority of them, duly authenticated, filed in the office of the secretary of the territory, they are authorized to organize the company and open books for further subscriptions, requiring payments or instalments from time to time; and in case of refusal or neglect on the part of stockholders to make payment as required, the shares of such delinquents may, after thirty days' public notice, be sold at auction, and the surplus, if any, deducting payments and interest, to be paid to such stockholder.

City or county may take stock.

SEC. 17. When the citizens of any county or city of this territory are desirous of subscribing to the stock of said company, the citizens of such city or county are authorized to purchase, subscribe or hold shares not exceeding one hundred thousand dollars in amount, as shall be determined by the county court or common council, making such subscription in all respects as stock owned by individuals; and such railroad company may dispose of bonds issued for such stock by said county or council upon such terms as may be necessary.

Subscriptions may be made in lands.

SEC. 18. Subscriptions to the stock of said company may be made in land in the same manner as in cash, and said company are hereby authorized to hold, purchase and convey the same as they may deem for their interest.

Company may issue bonds, &c.

SEC. 19. The company are hereby authorized to issue bonds upon their roads, or hold and sell the same in such amounts, upon such terms above or below par, and at such rates of interest as may be determined, which shall be binding upon the parties interested.

When to commence.

SEC. 20. The railroad company may commence the construction of the whole or of any section of the road herein granted not less than fifty miles in extent.

Powers of the company.

SEC. 21. This company shall have the power to make such contracts and arrangements with other railroads which connect with or intersect the same as may be mutually agreed upon by the parties for bearing or running their roads, or any part thereof, in connection with roads in other states, and shall be empowered to consolidate their property stock with each other; such consolidation to take place whenever such companies shall respectively agree upon the terms and conditions, and shall have all the powers, privileges and liabilities that they may have by their separate charters, by filing a copy of such articles of consolidation in the office of the secretary of this territory.

This act to take effect and be in force from and after its passage.

CHAPTER 85.

An act to incorporate the South Kansas Railroad Company.

§ 1. Capital stock of the company.
2. Names of corporators.
3. Election for directors.
4. Election, when to be held.
5. Powers of directors; quorum.
6. Capital stock to be paid in.
7. Powers of the company.
8. May take relinquishments.
9. When right of way is refused.
10. Report and plat to be filed.
11. May build along county roads; when.
§ 12. To commence road within nine years.
13. Dividends to be made.
14. Counties may take stock.
15. Exhibit of affairs to be made.
16. Plat of road to be filed.
17. Record of expense, &c., to be kept.
18. Of members.
19. Of obstructions; punishment.
20. Operations confined to general business.
21. Stock considered personal property.
22. Power to hold lands, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Capital stock of company.

Section 1. A company is hereby incorporated, called the South Kansas Railroad Company, the capital stock of which shall be three millions of dollars, to be divided into shares of fifty dollars each; the holders of which, their successors and assigns, shall constitute a body corporate and politic, and by the name aforesaid shall have continual succession, may sue and be sued, plead and be impleaded, defend and be defended against; and may make and use a common seal, and change or alter the same; and shall be able in law or equity to make contracts; may take, hold, use, possess and enjoy the fee simple or other title in and to any real estate necessary for the purpose of constructing and keeping in repair said road, and may sell, convey, pledge, mortgage or dispose of the same; may make by-laws, rules and regulations proper and necessary for carrying into effect the provisions of this act, not repugnant to the constitution or laws of the United States or of this territory, and shall have the usual and necessary powers of companies for such purposes.

Names of corporators.

Sec. 2. Andrew J. Dorn, William J. Godfroy, James M. Linn, Hir. T. Wilson, Joseph C. Anderson, Samuel A. Williams, Wiley Patterson, Alfred Hornbeck, R. G. Roberts, William J. Barns, Carter Mitchel, John W. Denton, John Guthrey, James S. Barbee, Charles Passmore, John Hamilton, William Barbee and John B. Smith, or any nine of them, shall constitute the first board of directors under this act, and shall hold their offices until their successors shall be qualified; they shall, within ten years from the date of the passage of this act, meet at such time and place as shall be designated by any three of them, and organize as a board of directors; when organized, they shall cause books to be opened, for the subscription of the capital stock of said company, at such time and place as they may designate, under the supervision of such persons as they may appoint, and may continue them open so long as they may deem proper, and may reopen such books when necessary, until the whole shall be subscribed.

Election for directors

Sec. 3. So soon as fifteen hundred shares shall be subscribed, the directors shall cause an election to be held for nine directors, at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

Election, when to be held.

Sec. 4. An election for nine directors shall be held on the first Monday in April in each year, and, if not held on that day, an election may be held at any other time that the directors shall designate; the election shall be held under the supervision of one or more of the stockholders, and the persons receiving the highest number of votes shall be elected, and shall continue in office until their successors be qualified; every stockholder shall be entitled to one vote for each share held by him, and he may vote by proxy; soon after their election the directors shall meet and elect one of their number president, who shall hold his office for the term for which he was elected director, and until his successor shall be qualified.

Powers of directors.

Sec. 5. The directors shall appoint agents, clerks, engineers, superintendents, and other officers and servants for said company; shall keep a journal of their proceedings; shall cause correct books and accounts to be kept; they may determine by law what number of directors shall constitute a quorum, may appoint committees, and fill all vacancies in any office under said company; they shall fix the salaries of the president and the officers and agents; they may take security from their officers and agents, and may adopt such measures and do such acts as will be best calculated to promote the prosperity and usefulness of said company.

Quorum.

Capital stock to be paid in.

SEC. 6. The directors shall make and advertise calls for the payment of the capital stock at such times and in such manner as they may deem proper; and if any stockholder shall fail to pay any such requisition within ten days after the time appointed, the said company may recover the same with interest, and no delinquent stockholder shall vote in said company.

Powers of company.

SEC. 7. Said company shall have full power to survey, mark, locate and construct a railroad from the Missouri state line, due west of the city of Springfield, in the state of Missouri; from thence taking the most practicable route so as to extend the southern branch of the Pacific railroad, in the direction of California, to the western line of Kansas territory, and for that purpose may hold a strip of land not exceeding one hundred feet in width, with as many set of tracks as the said president and directory may deem necessary; *provided*, that in passing hills or valleys, the said company are authorized to extend said width in order to effect said object, and may also hold sufficient land for the erection of depots, warehouses and water stations, and may extend branch railroads to any point in any of the counties through which said road may be located.

May take relinquishments.

SEC. 8. Said company may take voluntary relinquishments of the right of way for said road and the necessary depots and water stations; and if the land through which said road shall pass, shall belong to minors, in whole or in part, the guardian or curator of such minor shall have power to convey to said company so much of the land as may be necessary for the purpose aforesaid, on fair, equitable terms, but any such conveyance by guardian shall be subject to the approval or rejection of the probate or county court in which such guardianship is pending.

When right of way refused, what course.

SEC. 9. If any owner of any tract of land through which such railroad shall pass shall refuse to relinquish the right of way for said road to said company, or if the owners be infants or persons of unsound mind, or non-residents of this territory, the facts of the case shall be specifically stated to the judge of the circuit or district court of the county in which such lands are situated, and said judge shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the lands, and the advantages and disadvantages of the road to the same, and shall report under oath what damages will be due to said land or any improvements thereon, stating the amount of damages assessed, and shall return a plat of the land thus condemned; notice of such application to such judge shall be given to the owner of such land five days before the making of the application, if such owner reside in this territory, or to his guardian; and if such owner be a non-resident of this territory, he may be served with actual notice, or by an advertisement for four weeks in some public newspaper.

Report and plat to be filed, &c.

Sec. 10. The persons appointed to view and value such land shall file their report and plat in the office of the clerk of the circuit or district court (before whom the same may have been brought) of the county in which the land or a part thereof is situated, and, if no valid objection be made to said report, the court shall enter judgment in favor of such owner against such company for the amount of damages assessed, and shall make an order vesting in said company the fee simple title of the land, in such plat and report described.[1] Objections to such report must be filed in ten days after the same shall be filed, which objections shall be examined by said judge, in term time or vacation, and he may hear testimony and by judgment confirm said report, or may set the same aside and appoint three other viewers, who shall proceed in the same manner and make their report until a report is confirmed; *provided*, in order that the progress of the work may not be impeded, that after said reviewers have filed their report and plat in the office as aforesaid, the company after having made a tender of the amount of damages to the person or persons, or made a deposit of the amount of damages so assessed with the clerk of the circuit court or district court in which the case may be pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen. In all such cases, the court shall adjudge the costs of the proceedings according to equity, and the court shall have power to make such orders and take such other steps as will promote the ends of justice between the owners of such lands and said company.

May build along county roads, when.

Sec. 11. Said company may build said road along or across any territorial or county road, or street, or wharf, of any town or city, and over any stream or highway; but whenever said road shall cross any territorial or county road, said company shall keep good and sufficient causeways or other adequate facilities for crossing the same; and the said railroad shall be so constructed as not to prevent the public from using any road, street or highway, along which it may pass; and when said railroad shall be built across any navigable stream, said company shall construct a draw-bridge, so that in no case shall the free navigation of such stream be obstructed. When any person shall own land on both sides of said road, said company, when required so to do, shall make and keep in good repair one causeway or other adequate means of crossing the same.

To commence road within nine years.

Sec. 12. Said company shall commence the construction of said road within nine (9) years after the passage of this act, and shall complete the same within twenty years thereafter; and said company shall have general power to use, manage, control and enjoy said road shall determine what kind of carriages shall be used thereon, and by whom and in what manner; and shall determine the terms, conditions and manner in which merchandise, property and passengers shall be transferred and transported; and shall have power to construct and keep such turn-outs, gates, bridges, toll-houses, depots, warehouses, causeways, and other buildings, machinery and fixtures, as may be necessary. Said company may receive such tolls and freights as may be determined upon by the directors; and shall keep posted up estimates of rates of toll and freight to be charged.

Dividends to be made.

Sec. 13. Dividends of the profits of said company shall be made annually, or oftener if necessary; but the directors may reserve or set apart a portion of the profits as a contingent fund to meet expenses and losses.

County may take stock.

Sec. 14. It shall be lawful for the county tribunal of any county in which any part of the route of said railroad may be to subscribe to the stock of said company, and it may invest its funds in the stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interests and credit of the county. Such county court may appoint an agent to represent the county, vote for it, and receive its dividends; and any incorporated city, town or incorporated company may subscribe to the stock to said railroad company, and appoint an agent to represent its interests, give its vote, and receive its dividends, and may take proper steps to govern and protect the interests of such city, town or corporations.

Exhibit of affairs to be made.

Sec. 15. At any annual meeting of said company, the directors shall make to the stockholders an exhibit of the affairs and condition of the company; one-tenth part in interest of all the stockholders may call a meeting by giving four weeks' notice in two newspapers of general circulation.

Plat of road to be filed.

Sec. 16. When said road shall be completed, the company shall file a plat thereof in the office of the secretary of this territory, and the legislature may, at any time, require a statement from the company as to the progress of the work, the amount of business and the receipts of the company, and the books and accounts of said company, at any time, may be investigated by a committee appointed by the general assembly.

Record of expenses, &c., to be kept.

Sec. 17. Said company shall keep a fair record of the whole expense of constructing said road; and at the end of fifty years, the territory or state shall be at liberty to purchase said road by paying to said company the amount it shall be valued at, by persons to be mutually chosen by the territory or state and by said company; but two years' notice shall be given to said company of the intention of the territory or state to purchase said railroad.

Of members.

Sec. 18. When any person shall cease to be a stockholder, he shall cease to be a member of said company.

Of obstructions.

Sec. 19. If any person shall wilfully injure, obstruct or destroy said railroad, or shall break, destroy or deface any work, edifice, or other fixture or improvement belonging to said company, he shall be considered guilty of a criminal offence, and shall be punished in such manner as shall be prescribed by law, and shall also be liable to said company for all damages by it sustained.

Punishment.

Operations confined to general business.

Sec. 20. The operations of said company shall be confined to the general business of locating, constructing, making and using said railroad, and the acts necessary or proper to carry the same into complete and successful operation.

Stock deemed personal property.

Sec. 21. The stock of said company shall be considered personal property, and shall be assignable and transferable according to such rules and instructions as the board of directors shall, from time to time, make and establish; subject, however, to the laws of this territory, as the same exists, or may be changed hereafter either as a territory or state. In case that it shall happen, at any time, that an election of directors should not be made on any day, on which, pursuant to this act, or any regulations of said company, it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved; but it shall and may be lawful on any other day to make and hold an election of directors, in such manner as shall be regulated by the by-laws and ordinances of the company.

Power to hold lands, &c.

Sec. 22. Said company shall have power to receive and hold lands, gifts, grants and donations of lands, money or bonds, in any quantity, from this territory, (or state as may be,) or the United States; and may sell, convey, pledge, mortgage, or otherwise dispose of said lands, money or bonds, or any part thereof, and apply the proceeds of the same to the construction of said railroad.

This act to take effect and be in force from and after its passage.

CHAPTER 86.

An act to incorporate the Leavenworth, Pawnee and Western Railroad Company.

§ 1. Name and style of the company; capital stock, &c.
2. Board of directors.
3. Directors shall cause an election to be held.
4. Election for nine directors.
5. Directors shall appoint agents, clerk, &c.
6. Shall advertise call for payments.
7. Company's power to survey road.
8. Voluntary relinquishment of rights by company.
9. Persons appointed to view and value lands, shall report.
10. Company to build road over the public lands.
11. Company shall commence the construction of said road.
§ 12. Dividends of profits shall be declared, when.
13. Directors shall make annual exhibits of affairs.
14. Plat of road to be filed with the secretary of territory.
15. County courts may subscribe for stock.
16. Company shall keep record of expense.
17. When a person ceases to be a stockholder he ceases to be a member.
18. Penalty for destroying road.
19. Operations of company shall be confined, &c.
20. Stock of said company shall be personal property.
21. Shall have power to hold and convey lands, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Name and style of company.

Capital stock, &c.

Sue and plead.

Shall hold real estate.

By-laws.

Section 1. A company is hereby incorporated, called the Leavenworth, Pawnee and Western Railroad Company, the capital stock of which shall be five millions of dollars, to be divided into shares of fifty dollars each; the holders of which, their successors and assigns, shall constitute a body corporate and politic, and by the name aforesaid shall have continual succession, may sue and be sued, plead and be impleaded, defend and be defended against, and may make and use a common seal and change and alter the same at pleasure, and shall be able in law and equity to make contracts; may take, hold, use, possess and enjoy the fee simple or other title in and to any real estate, necessary to carry out the provisions of this act and no more, and may sell, convey, pledge, mortgage or dispose of the same; may make by-laws, rules and regulations proper and necessary for carrying into effect the provisions of this act, not repugnant to the constitution or laws of the United States or of this territory, and shall have the usual and necessary powers of companies for such purposes.

Directors.

Sec. 2. W. H. Russell, J. Marion Alexander, S. D. Lecompte, Amos Rees, James Davies, W. F. Dyer, Robert Wilson, James Findlay, E. S. Wilhoit, Edward H. Dennis, C. H. Grover, Wilburn Christison, M. P. Rively, Charles Hays and Cornelius M. Burgess, or any five of them, shall constitute the first board of directors under this act, and shall hold their office until their successors shall be qualified; they shall, within five years from the date of the passage of this act, meet at such time and place as shall be designated by any three of them, and organize as a board of directors; and when organized, they shall cause books to be opened for subscription to the capital stock of the said company, at such time and place as they may designate, under the supervision of such persons as they may appoint, and may continue them open so long as they may deem proper, and may re-open such books when necessary until the whole stock shall be subscribed.

Shall meet at such time and place.

Books to be opened.

Re-open books.

SEC. 3. So soon as three thousand shares shall be subscribed, the directors shall cause an election to be held for nine directors, at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

Shall cause an election to be held.

SEC. 4. An election for nine directors shall be held on the first Monday in April in each year, and, if not held on that day, an election may be held at any other time that the directors shall designate; the election shall be held under the supervision of three or more stockholders, and the persons receiving the highest number of votes shall be elected, and shall continue in office until their successors be qualified; every stockholder shall be entitled to one vote for each share held by him, and he may vote by proxy; soon after the election, the directors shall meet and elect one of their number as president, who shall hold his office for the term for which he was elected director and until his successor shall be qualified.

Nine directors to be elected.

Vote by proxy.

SEC. 5. The directors shall appoint agents, clerks, engineers, superintendents, and other officers and servants for said company, and shall keep a journal of their proceedings, and shall cause correct books and accounts to be kept; they may determine by law what number of directors shall constitute a quorum, may appoint committees, and fill all vacancies in any office under said company; they shall fix the salaries of the president, and the officers and agents; they may take security of their officers and agents, and may adopt such measures and do such acts as will be best calculated to promote the prosperity and usefulness of said company.

Directors shall appoint agents, clerks &c.

Shall determine number of directors.

SEC. 6. The directors shall make and advertise calls for the payment of the capital stock at such times and in such manner as they may deem proper, and if any stockholder shall fail to pay any such requisitions within ten days after the time appointed, the said company shall recover the same with interest, and if not collected may direct the stock forfeited, and sell the same; and no delinquent stockholder shall vote in said company.

Calls for payment.

Forfeited stock.

Locate and survey road.

SEC. 7. Said company shall have full power to survey, work, locate and construct a railroad from the west bank of the Missouri river, in the town of Leavenworth, in this territory; and from thence west to the town of Pawnee, or to some point feasible and near to the government reservation for Fort Riley, with the privilege of extending the same to the western boundary of the territory, and for that purpose may hold a strip of land, not exceeding one hundred feet in width, with as many set of tracks as the said president and directors may deem necessary; *provided*, that in passing hills or valleys the said company are authorized to extend said width in order to effect said object, and may also hold sufficient land for the erection of depots, warehouses and water stations, and may extend branch railroads to any point in any of the counties through which the said road may be located; and said company shall have power to construct a branch road from any point in the main track of said road to the town of Kickapoo, on the Missouri river; no discrimination shall be made between the main trunk of said railroad and the branches connecting with the same, in regard to the rates of passage and the charges for freight shipped over the same.

Width of road.

Depots.

Rates of passage.

To take relinquishments of right.

SEC. 8. Said company shall take voluntary relinquishments of the right of way for said road, and the necessary depots and water stations; and if the land through which said road shall pass shall belong to minors, in whole or in part, the guardian or curator of such minor shall have to convey to said company so much of the land as may be necessary for the purposes aforesaid, on fair and equitable terms, but every such relinquishment shall be subject to the approval or rejection of the probate or other court in which such guardianship is pending. If any owner of any tract of land through which said railroad shall pass shall refuse to relinquish his right of way for said railroad to said company, or the necessary land for depots, engine or wood-houses, water stations, stopping stages or turnouts, or if the owners be infants or persons of unsound mind, or non-residents of the territory, the facts of the case shall be specially stated to the judge of the district court of the county, or presiding judge of the court of common pleas of the county, as the case may be, in which such lands are situated, and said judge shall appoint three disinterested citizens of the county in which such lands are situated to view said lands, who shall take into consideration the value of the land and the advantages and disadvantages of the road to the same, and shall report, under oath, what damages will be due to said lands, or any improvements thereon, stating the amount of damages assessed, and shall return a plat of the land thus condemned; notice of such application to such judge shall be given to the

Approval or rejection of the probate court.

District court.

Shall report under oath.

owner of such land five days before the making of the application; if such owner reside in this territory, or to his guardian; and if such owner be a non-resident of this territory, he may be served with actual notice, or by an advertisement for four weeks in some public newspaper.

Report to be made.

SEC. 9. The persons appointed to view and value such lands shall file their report and plat in the office of the clerk of the district court or court of common pleas, as the case may be, of the county in which the land or a part thereof is situated; and if no valid objections be made to said report, the court shall enter judgment in favor of such owner, against such company, for the amount of damages assessed, and shall make an order vesting in said company, in fee simple, title of the land in such plat and report described. Objections to such report must be filed within ten days; after the same shall have been filed, said objections shall be examined by said judge, in term time or vacation, and he may hear testimony and by judgment confirm said report, or he may set the same aside and appoint three other viewers, who shall proceed in the same manner and make a report until a report is confirmed: *Provided*, in order that the progress of the work may not be impeded, that after said owners have filed their report and plat in the office aforesaid, the company after having made a tender of the amount of damages to the person or persons entitled to the same, or made a deposit of the amount with the clerk of the court in which the case may be pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen. In all such cases, the court shall adjudge the costs of the proceedings according to equity, and the court shall have power to make such orders and take such other steps as will promote the ends of justice between the owners of such lands and the said company, and the said viewers shall be entitled to the same fees as are allowed to commissioners in partition under the statute.

Court to enter judgment.

Objections must be filed.

Tender of damages.

May build said road over public lands, &c.

SEC. 10. Said company may build said road along or across any public road, or street, or wall of any town or city, and over any stream or highway; but whenever said road shall cross any public road, said company shall keep good and sufficient causeways, or other adequate facilities for crossing the same; and said road shall not be so constructed as to prevent the public from using any road, street or highway, along or across which it may pass; and when said railroad shall be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a draw-bridge, so that in no case shall the free navigation of such stream be obstructed. When any person shall own lands on both sides of said road,

Shall erect sufficient bridge.

said company, when required so to do, shall make and keep in good repair one causeway or other adequate means of crossing the same.

Shall construct said road in five years.

SEC. 11. Said company shall commence the construction of said road within five years, and shall complete the same within twelve years thereafter; and said company shall have general power to use, manage, control and enjoy said road; shall determine what kind of carriages shall be used thereon, and by whom and in what manner; and shall determine the terms, condition and manner in which merchandise, property and passengers shall be transported; and shall have power to construct and keep such turnouts, gates, culverts, toll-houses, depots, warehouses, causeways and other buildings, machinery and fixtures, as may be necessary. Said company may receive such tolls and freights as may be determined upon by the directors, and shall keep posted up in their depots estimates of the rates of tolls and freight charged.

Dividends of profits shall be declared, when.

SEC. 12. Dividends of so much of the profits of said company as shall appear advisable to the directors shall be declared semi-annually, and be paid to the stockholders or their legal representatives, on application at the office of said company, at any time after the expiration of ten days from the time of declaring the same; but the dividends shall in no case exceed the amount of the nett profits actually acquired by the company, so that the capital stock shall never be impaired thereby; and if the said directors shall make any dividend which shall impair the capital stock of the company, the directors consenting thereto shall be liable, in their individual capacities, to the company for the amount of capital stock so divided, and each director present when such dividend shall be declared shall be considered as consenting thereto, unless he immediately enter his protest on the minutes of the board, and give public notice to the stockholders of the declaring of such dividends.

Directors consenting, shall be responsible in their individual capacity.

Shall make annual exhibits.

SEC. 13. At every annual meeting of said company, the directors shall make to the stockholders an exhibit of the affairs and condition of the company; one-tenth part in interest of all the stockholders may call a meeting by giving four weeks' notice in two public newspapers.

Plats to be filed.

SEC. 14. When said road shall be completed, the company shall file a plat thereof in the office of the secretary of the territory, or of the state or states, as the case may be, and the legislature may at any time require a statement from the company as to the progress of the work, the amount of business, and the receipts of the company; and the books and accounts of said company may at any time be investigated by a committee appointed by the general assembly; and the said corporation shall make an annual report to the secretary of the territory, or of the state or states, as the case may be, of the operations of the year ending on the first day of December, which report shall be verified by the oaths of the treasurer and acting superintendent of operations, and filed in the office of the secretary of the territory, or of the state or states, as the case may be, by the third Monday in December, in each year, and shall state, *first*, the capital stock and the amount actually paid in; *second*, the amount expended for the purchase of land for the construction of the road, for buildings, and for engines and cars, respectively; *third*, the amount and nature of its indebtedness, and the amount due the corporation; *fourth*, the amount received for the transportation of passengers, of mails, of property, and from all other sources; *fifth*, the amount of freight (specifying the quantity in tons) of the products of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise and other articles; *sixth*, the amount paid out for repairs; *seventh*, the number and amount of dividends, and when made; *eighth*, the number of engine houses and shops, of engines and cars, and their character; *ninth*, the number of miles run by passenger, freight and other trains, respectively; *tenth*, the number of men employed, and their occupations; *eleventh*, the number of persons injured, in life or limb, and the cause of such injuries; *twelfth*, whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

Shall make report to the secretary of the territory or state.

SEC. 15. It shall be lawful for the county court of any county in which any part of the route of said railroad may be, to subscribe to the stock of said company; and it may invest its funds in the stock of said company and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interests and credit of the county. Such county court may appoint an agent to represent the county, vote for it, and receive its dividends; and any incorporated city, town or incorporated company may subscribe to the stock of said company, and appoint an agent to represent its interests, give its vote and receive its dividends, and may take proper steps to guard and protect the interests of such city, town or corporation.

County courts may subscribe for stock.

SEC. 16. Said company shall keep a fair record of the whole expense of constructing said road, and at the end of fifty years the state or states through which the said road shall pass shall be at liberty to purchase said road by paying to said company the amount at which it shall be valued at by persons to be mutually

Company shall keep a record of expenses

chosen by the state and by the said company; but two years' notice shall be given to said company of the intention of the state to purchase said railroad.

Cease to be a member.

SEC. 17. When any person ceases to be a stockholder he shall cease to be a member of said company.

Penalty for destroying road.

SEC. 18. If any person shall wilfully injure, obstruct or destroy said railroad, or shall break, destroy or deface any work, edifice or other fixture or improvement belonging to said company, he shall be considered guilty of a criminal offence, and shall be punished in such manner as shall be prescribed by law; and shall also be liable to said company for all damages by it sustained.

Confinement of operations.

SEC. 19. The operations of said company shall be confined to the general business of locating, constructing, making and using said railroad, and the acts necessary or proper to carry the same into complete and successful operation.

Stock shall be personal property.

SEC. 20. The stock of said company shall be considered personal property, and shall be assignable and transferable according to such rules and restrictions as the board of directors shall from time to time make and establish, subject, however, to the laws of the territory, or any future state erected out of this territory, as the same may be made. In case that it shall happen, at any time, that an election of directors should not be made on any day when, pursuant to this act or any regulations of said company, it ought to have been made, the said corporation shall not, for that cause, be deemed dissolved; but it shall and may be lawful, on any other day, to make and hold an election of directors in such manner as shall be regulated by the by-laws and ordinances of the company.

Shall hold lands.

May convey lands.

SEC. 21. Said company shall have power to receive and hold loans, gifts, grants and donations of land, money or bonds, in any quantity, from this territory, or from any future state erected out of this territory or the United States; and may sell, convey, pledge, mortgage, or otherwise dispose of said lands, moneys or bonds, or any part thereof, and apply the proceeds of the same to the construction of said railroad.

This act to take effect and be in force from and after its passage.

CHAPTER 87.

An act to incorporate the Leavenworth and Lecompton Railroad Company.

§ 1. Names of corporation; body corporate.
2. Names of the corporators and directors.
3. Election, when to be held.
4. Regular elections, when held.
5. May appoint agents, clerks, &c.
6. Make calls for payment of stock, &c.
7. Powers of the company.
8. May take relinquishments.
9. When right of way refused.
10. Report of viewers to be filed, &c.
11. May build along territorial roads.
12. May take stock in Lecompton Bridge Company.
§ 13. To commence construction, when.
14. Dividends to be made.
15. May use stones, gravel, &c., from other lands, when.
16. May extend capital.
17. Exhibit of affairs to be made.
18. Plat of road to be filed.
19. Of members.
20. Of obstructions.
21. Sections of corporation not to apply.
22. Not to construct for any other points; proviso.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Name of the corporation.

SECTION 1. That a company is hereby incorporated under the name and title of the "Leavenworth and Lecompton Railroad Company," the capital stock of which shall be three millions of dollars, to be divided into shares of fifty dollars each; the holders of which, their successors and assigns, shall constitute and be a body corporate, in law and in fact, by the name and style aforesaid, and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, defend and be defended against, and may make and use a common seal, and shall be able in law and equity to make contracts; may have and hold, use and possess, and enjoy the fee simple or other title in and to any real estate and lands, and may sell and dispose of the same by grant, conveyance, put on interest, or otherwise dispose of the same, as may be lawful; may make by-laws and regulations proper for carrying into effect the provisions of this act, not repugnant to the constitution of the United States or laws of this territory; and shall have the usual and necessary powers of companies for such purposes; *provided, however*, that the funds of said company shall never be invested in the purchase of any land in this territory, except such as may be necessary for the construction of such road, its depots, shops and turn-outs, and in such as may be sold under judgments in favor of said company.

Body corporate

Names of the corporators and directors

SEC. 2. That Aristides Rodrigue, H. D. McMeekin, John A. Halderman, R. R. Rees, A. G. Boone, Daniel Woodson, Samuel D. Lecompte, William J. Martin, S. W. Tunnel, Charles H. Grover, or a majority of these, shall constitute the first board of directors under this act, and shall hold their office until their successors are duly elected and qualified; they shall meet at such time and place as shall be designated by the director first named in this act, and organize themselves into a board of directors, and, when organized, shall cause books to be opened for the subscription of capital stock of said company, at such times and places as they designate, under the supervision of such person or persons as they may appoint, and continue them open so long as they may deem necessary and proper, and may re-open such books when necessary until the whole stock shall be subscribed.

Election, when to be held.

SEC. 3. So soon as five hundred shares shall have been subscribed, the directors shall cause an election to be held for the election of seven directors, at such time and place as they may designate, having given public notice thereof in at least four newspapers.

Regular elections, when held.

SEC. 4. An election of seven directors shall be held on the first Monday in May in each year, and, if not held on that day, an election may be held at any other time the directors may designate; the election shall be held under the supervision of one or more stockholders, and the persons receiving the highest number of votes shall be elected, and shall continue in office until their successors are duly elected and qualified. Every stockholder shall be entitled to one vote for each share held by him, and he may vote by proxy. Soon after their election, the directors shall meet and elect one of their number president, who shall hold his office for the term for which he was elected director, and until his successor shall be qualified.

May appoint agents, clerks, &c.

SEC. 5. The directors may appoint agents, clerks, engineers, superintendents, and other officers and servants for said company, and shall keep a journal of their proceedings; shall cause correct books and accounts to be kept; they may determine by by-laws what number of directors shall constitute a quorum, and may appoint committees and fill vacancies in office under said company; they may fix the salary of the president and officers and agents, but no director shall receive any compensation for his services as such; they may take security from the officers and agents, and may adopt such measures and do such acts as will be best calculated to promote the prosperity and usefulness of said company.

May make calls for payment of stock, &c.

SEC. 6. The directors shall make and advertise calls for the payment of the capital stock at such time and in such manner as they may deem proper; and if any stockholder shall fail to pay any such requisition within thirty days after the time appointed, the said company may recover the same with interest, and, if not collected, may declare the stock forfeited and may sell the same; and no delinquent stockholder shall vote in said company.

SEC. 7. Said company shall have full power to survey, mark, locate and construct a railroad from the city of Leavenworth to Lecompton, and for that purpose may hold a strip of land not exceeding one hundred feet wide, and may also hold sufficient additional land for the construction of depots, warehouses, water stations and other houses for the use of the company; and may select such routes as may be deemed most advantageous, and may extend branch railroads to any point in any of the counties through which such road shall pass. Powers of the company.

SEC. 8. Said company may take voluntary relinquishments for the right of way for said road, and the necessary depots, water-stations, &c., as above mentioned; and if the land through which the road shall pass belongs to minors, in whole or in part, the guardian or curator of said minor shall have power to convey to said company so much of the lands as may be necessary for the accomplishment of the purposes aforesaid, on fair and equitable terms; but every such conveyance by a guardian or curator shall be subject to the approval of the court having probate jurisdiction in which said guardianship is pending. May take relinquishments

SEC. 9. If any owner of any tract of land through which said road may pass refuses to relinquish the right of way for said road to said company, or if the owners be infants or persons of unsound mind, or non-residents of the territory, the facts of the case shall be specifically stated to the judge of the district or probate court of the county in which such lands are situated, and the judge shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the lands, and the advantages and disadvantages of the road to the same; and shall report, under oath, what damages will be done to said land or any improvement thereon, stating the amount of the damages assessed, and shall return a plat of the land thus condemned. Notice of such application to the judge shall be given to the owner of such land five days before making such application, if such owner reside in the territory, or to his guardian; and if such owner be a non-resident of this territory, he may be served with actual notice, or by an advertisement for four weeks in some newspaper. When right of way refused.

SEC. 10. The persons appointed to view and value such lands shall file their report in the office of the clerk of the district or probate court of the county in which the land or part thereof is situated, and, if no valid objection be made to said report, the court shall enter judgment against said company for the amount of damages so assessed, and shall make an order vesting in said company the fee simple title of the land in such plat and report described. Objections to such report must be filed within ten days Report to be filed, &c.

after the same shall be filed, which objections shall be examined by said judge in term or vacation, and he may hear testimony and by judgment confirm said report, or may set aside the same and appoint three other viewers, who shall proceed in the same manner, and make their report until their report shall be confirmed. In all such cases, the court shall adjudge the costs of the proceedings to the equity of the case, and the said court shall have power to make such orders and take such other steps as will promote the ends of justice between the owner of said land and said company.

May build along territorial roads.

SEC. 11. Said company may build said road along or across any territorial or county road, or the streets or wharves of any town or city, and over any stream or highway; but whenever said railroad shall cross any territorial or county road, said company shall keep good and sufficient causeways or other adequate facilities for crossing the same, and said railroad shall not be so constructed as to prevent the public from using any road, street or highway along or across which it may pass; and when said railroad shall be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a draw-bridge, so that in no case shall the free navigation of such stream be obstructed.

May take stock in Lecompton Bridge Company, &c.

SEC. 12. Said company shall have the privilege to take stock in the Lecompton Bridge Company, and unite with the said company to construct a railroad and carriage bridge at the town of Lecompton.

To commence construction, when.

SEC. 13. Said company shall commence the construction of said road within five years, and shall complete the same within ten years thereafter; and said company shall have general and exclusive power to use, manage, control and enjoy said railroad; shall determine what kind of carriage shall be used thereon, and by whom and in what manner; and shall determine the terms and conditions and manner in which merchandise, property and passengers shall be transported thereon; and shall have power to construct and keep such turnouts, gates, bridges, culverts, toll-houses, depots, warehouses, causeways and other buildings, machinery and fixtures, as may be necessary; the company may receive such tolls and freights as may be determined on by the directors, and shall keep posted up statements of the rates of toll and freights to be charged.

Dividends to be made.

SEC. 14. Dividends of the profits of the company shall be made annually, or oftener if necessary; but the directors may reserve or set apart a portion of the profits as a contingent fund to meet expenditures, losses, and for other purposes.

SEC. 15. If said company shall require for the construction or repair of said road any stone, gravel or other materials from the land of any person adjoining to or near said road, and cannot contract for the same with the owner thereof, said company may proceed to take possession of and use the same, and have the property assessed according to sections nine and ten of this act; and in raising money for the completion of said road or branches, set forth in this act of incorporation, the company shall have the privilege of issuing its bonds in sums of not less than one hundred dollars, redeemable at any time after five years from their date, bearing interest at the rate of not more than fifteen per cent. per annum.

May use stone, gravel, &c, from other lands, when.

SEC. 16. Said company shall have power to extend their capital, receive and hold loans, gifts, grants and donations of lands, money or bonds, in any quantity, from this territory or the United States, and may sell, convey, pledge, mortgage or otherwise dispose of said lands or any part thereof, and apply the proceeds to the construction of said road and branches, and the benefit of said company.

May extend their capital.

SEC. 17. At every annual meeting of said company, the directors shall make to the stockholders an exhibit of the affairs and condition of the company; one-seventh in interest of all the stockholders may call a meeting by giving four weeks' notice in one newspaper printed in the territory, one at the seat of government, and one in the city of St. Louis, Missouri.

Exhibit of its affairs to be made.

SEC. 18. When said road shall be completed, the company shall file a plat thereof in the office of the secretary of the territory, and the legislature may at any time require a statement from the company as to progress of the work, the amount of business and the receipts of the company.

Plat of road to be filed, &c.

SEC. 19. When any person shall cease to be a stockholder he shall cease to be a member of said company.

Of members.

SEC. 20. If any person or persons shall wilfully injure, obstruct or destroy, or in any way deface or injure said railroad or any property belonging to said company, or shall break, deface or destroy any work, edifice or other fixture or fixtures, or improvements of and belonging to said company, he shall be guilty of a criminal offence and shall be punished in such manner as shall be provided by law, and shall also be liable to said company for double the amount of damages by it sustained.

Of obstructions.

SEC. 21. That sections seven, thirteen and twenty of article first, and so much of section eleven, article second, as relates to "stock owned," of an act concerning corporations, shall not apply to this act.

Sections not to apply to this act.

Not to construct for any other points.

SEC. 22. Nothing in this act shall be construed as vesting in the company hereby created the exclusive right to construct a railroad from any other point than the town of Leavenworth to Lecompton; *and provided further*, that if said road be not commenced and at least ten miles thereof be completed within five years, the legislative assembly shall have power to authorize any other company or persons to lay out and construct a road between Leavenworth and Lecompton.

Proviso.

This act to take effect and be in force from and after its passage.

CHAPTER 88.

An act to incorporate the Kansas Valley Railroad Company.

§ 1. Capital stock of company; powers.
2. Names of first board of directors; times of meeting.
3. First election to be held, when.
4. Election for directors, when.
5. Directors to appoint officers, &c.
6. Duties of directors.
7. Powers of the corporation.
8. May take relinquishment, &c.
9. When right of way refused, facts to be stated to judge.
10. Plat and report of viewer to be filed.
11. May build along territorial roads, when.
§ 12. To commence said road within seven years.
13. Dividends to be made annually.
14. Directors to make an exhibit of the condition of the company.
15. Company to file a plat of the road.
16. Of members.
17. Of injury to road.
18. Operations to be confined to general business.
19. When the route of railroad may be changed.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Capital stock of company.

SECTION 1. A company is hereby incorporated, called the Kansas Valley Railroad Company, the capital stock of which shall be five millions of dollars, to be divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body corporate and politic, and by the name aforesaid shall have continued succession, may sue and be sued, plead and be impleaded, defend and be defended against, and may make and use a common seal; and shall be able, in law and equity, to make contracts; may take, hold, use, possess and enjoy the fee simple or other title in and to any real estate, and may sell and dispose of the same; may make by-laws, rules and regulations proper for carrying into effect the provisions of this act, not repugnant to the constitution or laws of the United States or of this territory; and shall have the usual and necessary powers of companies for such purposes.

Powers.

SEC. 2. Thomas Johnson, Johnston Lykins, John P. Wood, Rush Elmore, Andrew McDonald, Thomas N. Stinson, H. J. Strickler, Cyprian Chouteau, and Andrew J. Isaacs, shall constitute the first board of directors under this act, and shall hold their offices until their successors shall be qualified; they shall meet at such time and place as shall be designated by a majority of them, and organize as a board of directors; and when organized, they shall cause books to be opened for subscription of the capital stock of said company, at such times and places as they may designate, under the supervision of such person or persons as they may appoint; and may continue them open so long as they may deem proper, and may re-open such books, when necessary, until the whole stock shall be subscribed.

First board of directors.

Times of meeting.

SEC. 3. So soon as five hundred shares shall be subscribed, the directors shall cause an election to be held for nine directors, at such time and place as they may appoint, and give notice of, by newspaper publication.

First election to be held, when.

SEC. 4. An election for nine directors shall be held on the second Tuesday of October, in each year, and, if not held on that day, an election may be held at any other time that the directors may designate; the election shall be held under the supervision of one or more stockholders, and the persons receiving the highest number of votes shall be elected, and shall continue in office till their successors be qualified; every stockholder shall be entitled to one vote for each share held by him, and he may vote by proxy; soon after their election, the directors shall meet and elect one of their number president, who shall hold his office for the term for which he was elected director, and until his successor shall be qualified.

Election for directors, when.

SEC. 5. The directors shall appoint agents, clerks, engineers, superintendents, and other officers and servants for said company; shall keep a journal of their proceedings; shall cause correct books and accounts to be kept; they may determine by by-laws what number of directors shall constitute a quorum, and may appoint committees and fill all vacancies in any office under said company; they shall fix the salaries of the president, and the officers and agents, but no director shall receive any compensation for his services, as such; they may take security from their officers and agents, and may adopt such measures and do such acts as may be best calculated to promote the prosperity and usefulness of said company.

Directors may appoint officers, &c.

SEC. 6. The directors shall make and advertise calls for the payment of the capital stock at such times and in such manner as they may deem proper; and if any stockholder shall fail to pay such requisition within ten days after the appointed time, the

Duty of directors.

said company may recover the same, with interest, and, if not collected, may declare the stock forfeited and sell the same; and no delinquent stockholder shall vote in said company.

Powers of the company.

SEC. 7. Said company shall have full power to survey, mark, locate and construct a railroad, from the western boundary line of the state of Missouri, on the south side of Kansas or Kaw river, commencing at the western terminus of the Pacific railroad, near the mouth of the Kansas river, running up the valley of said river on the south bank thereof, by the way of Lawrence, Benicia, Douglass, Lecompton, Tecumseh, and terminating at or near the town of Pawnee; and for that purpose may hold a strip of land, not exceeding one hundred feet wide, and may also hold sufficient land for the construction of depots, warehouses and water stations; and may select such route within the valley or ravine of said river as may be deemed most advantageous, and may extend branch railroads to any point in any of the counties in which said road may be located.

May take relinquishments, &c.

SEC. 8. Said company may take voluntary reliquishments of the right of way for said road, and the necessary water stations and depots; and if the land through which such road shall pass shall belong to minors, in whole or in part, the guardian or curator of such minor shall have power to convey to said company so much of the land as may be necessary for the purposes aforesaid, on fair and equitable terms; but ery such conveyance by a guardian shall be subject to the approval or rejection of the probate or county court in which such guardianship is pending.

When right of way refused, facts to be stated to judge.

SEC. 9. If any owner of any tract of land through which said railroad shall pass shall refuse to relinquish the right of way for said road to said company, or if the persons be infants or persons of unsound mind, or non-residents of the territory, the facts of the case shall be specifically stated to the judge of the district or probate court of the county in which such lands are situated, and said judge shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the land, and the advantages and disadvantages of the road to the same and shall report under oath what damages will be done to said land or any improvement thereon, stating the amount of the damages assessed, and shall return a plat of the land thus condemned; notice of such application [to such judge shall be given to the owner of such land five days before the making of the application], if such owner reside in this territory, or to his guardian; and if such owner be a non-resident of this territory, he may be served with actual notice, or by an advertisement for four weeks in some newspaper.

Plat and report of viewers, &c., to be filed.

SEC. 10. The persons appointed to view and value such lands shall file their report and plat in the office of the clerk of the district or probate court in which the land or part thereof is situated, and, if no valid objections be made to said report, the court shall enter judgment against said company for the amount of damages so assessed, and shall make an order vesting in said company the fee simple title of the land in such plat and report described. Objections to such report must be filed within ten days after the same shall be filed, which objections shall be examined by said judge in term time or vacation, and he may hear testimony and by judgment confirm said report, or may set the same aside and appoint three other viewers, who shall proceed in the same manner and make their report until a report shall be confirmed. In all such cases, the court shall have power to make such orders and take such other steps as will promote the ends of justice between the owners of such land and the said company.

May build along territorial road, when.

SEC. 11. Said company may build said road along or across any territorial or county road, or the streets or wharves of any town or city, and over any stream or highway; but whenever said railroad shall cross any territorial or county road, said company shall keep good and sufficient causeways, or other adequate facilities for crossing the same; and said railroad shall not be so constructed as to prevent the public from using any road, street or highway, along or across which it may pass; and when said railroad shall be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a draw-bridge, so that in no case shall the free navigation of such stream be obstructed.

To commence said road within seven years.

SEC. 12. Said company shall commence the construction of said road within seven years, and shall complete the same within ten years thereafter; and said company shall have general power to use, manage, control, and enjoy said railroad; shall determine what kind of carriages shall be used thereon, and by whom and in what manner; and shall determine the terms, conditions and manner in which merchandise, property and passengers shall be transported thereon; and shall have power to construct and keep such turn-outs, gates, bridges, culverts, toll-houses, depots, warehouses, causeways and other buildings, machinery and fixtures, as may be necessary.

Dividends to be made annually.

SEC. 13. Dividends of the profits of said company shall be made annually or oftener if necessary, but the directors may reserve or set apart a portion of the profits as a contingent fund to meet expenditures and losses.

Directors to make an exhibit of condition of company.

SEC. 14. At every annual meeting of said company, the directors shall make to the stockholders an exhibit of the affairs and condition of the company; one-seventh part in interest of all the stockholders may call a meeting by giving four weeks' notice in one newspaper printed in the territory.

Company to file a plat of road.

SEC. 15. When said road shall be completed, the company shall file a plat thereof in the office of the secretary of the territory; and the legislature may, at any time, require a statement from the company as to the progress of work, the amount of business, and the receipts of the company; and the books and accounts may, at any time, be investigated by a committee appointed by the legislative assembly.

Of members.

SEC. 16. When any person shall cease to be stockholder he shall cease to be a member of said company.

Of injury to said road.

SEC. 17. If any person shall wilfully injure, obstruct or destroy said railroad, or shall break, destroy or deface any work, edifice, or other fixture or improvement belonging to said company, he shall be considered guilty of a criminal offence, and shall be punished in such manner as shall be prescribed by law, and shall also be liable to said company for all damages by it sustained.

Operations to be confined to general business.

SEC. 18. The operations of said company shall be confined to the general business of locating, constructing, managing and using said road, and the acts necessary or proper to carry the same into complete and successful operation.

When route of said railroad can be changed.

SEC. 19. If, in locating said railroad, it shall be discovered that the expenses of construction can be diminished by a change of route, said company shall have the privilege of bridging Kansas river, at some point west of Tecumseh, and running said road from thence up the north side of Kansas river to the western terminus of said road; *provided, however,* that said bridge shall not, in any way, obstruct the navigation of Kansas river; said company may receive such tolls and freights as may be determined on by the directors, and shall keep posted up statements of the rates of toll and freight to be charged.

This act to take effect and be in force from and after its passage.

CHAPTER 89.

An act to incorporate and provide for the institution and support of a University in Kansas territory.

ARTICLE I.

§ 1. Fund created for the support of a university.
2. To remain a permanent fund for the promotion of literature, &c.
3. Portion to be appropriated yearly.
4. Duty of auditor of public accounts.
5. List of sales to be entered.
§ 6. Auditor and treasurer to perform certain duties.
7. Who shall be commissioners.
8. Auditor to make report to commissioners, when.
9 Certificates of stock may be taken.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Fund created for support of a university.

Section 1. There shall be hereby created and established a fund to support a territorial university for the promotion of literature and of the arts and sciences, to be denominated "The Seminary Fund," which shall consist of all moneys arising from the sale of all lands which may be donated by the congress of the United States for seminary purposes, and all money which may be donated for that purpose from any and all sources, and the interest, dividends, profits and proceeds of such lands and moneys, except such distribution as shall be by law authorized.

To remain a permanent fund for the promotion of literature

Sec. 2. The seminary fund shall be and remain a permanent fund for the promotion of literature and of the arts and sciences, and so much of the income thereof shall be added to and become a part of the fund as shall not be appropriated hereafter by law.

What portion to be appropriated yearly.

Sec. 3. So much only of the income of the seminary fund shall be appropriated in any year as shall be necessary for the purposes to which the application thereof shall be authorized by law, and the residue shall be added to and become part of the permanent fund, which shall never be lessened or impaired.

Duty of auditor of public accounts.

Sec. 4. It shall be the duty of the auditor of public accounts to provide and keep in his office a book to be called "The Register of Seminary Lands," in which shall be entered a description of all seminary lands held by the territory, showing the county wherein situate, the range, township and legal subdivisions, arranged with suitable columns; in which shall be noted all sales, by the date, number of acres, price per acre, and total amount of each tract.

List of sales to be entered.

Sec. 5. The auditor shall also enter in such book a list of sales hereafter made, showing the particulars of description of lands and the sales thereof, specified in the last preceding section.

Auditor and treasurer to perform certain duties.

Sec. 6. The auditor of public accounts and the treasurer of the territory shall respectively perform like duties and possess the same powers in relation to the seminary lands, fund, and income, as they respectively are or may be required to perform or exercise in relation to common school lands, funds and moneys, and shall account themselves, and shall require others to account to them, in the same manner as in common school lands, funds and moneys, except in cases otherwise provided.

Who shall be commissioners.

Sec. 7. The governor, secretary of the territory and district attorney shall, by virtue of their respective offices, be commissioners of the seminary fund.

Auditor to make report to commissioners, when.

Sec. 8. Whenever there shall be in the treasury or elsewhere, subject to the order of the treasurer, any money belonging to the capital of the seminary fund, the auditor shall make report to the commissioners, who shall direct the same to be invested in such public stocks as they shall deem most advantageous to the fund; and the auditor, as soon as it may be advantageously done, shall make the investment accordingly.

Certificates of stock may be taken.

Sec. 9. Certificates of stock or bonds shall be taken for such investments in the name of the office of the auditor, in trust for the seminary fund, which trust shall be specially expressed in every such bond or certificate.

ARTICLE II.

§ 1. Government of university, in what vested.
2. Created a body politic; powers.
3. Number of curators, how chosen.
4. Qualification of curators.
5. Vacancy, how supplied.
6. To take an oath of office.
7. Annual meetings, when held.
8. Officers to be chosen.
9. Duty of the president.
10. May call special meetings; proviso.
11. May order adjourned meetings.
12. Number to constitute a quorum.
13. Duties of secretary.
14. To keep records, prepare reports, &c.
§ 15. Curators to examine records.
16. Duty of the treasurer.
17. Powers of curators.
18. May confer diplomas, &c.
19. Grants to be applied, how.
20. Duty of curators.
21. Powers of curators.
22. President to superintend, &c.
23. Curators to appoint professors, &c.
24. Auditor to perform certain duties.
25. Curators may require auditor to draw warrant, &c.
26. Salaries of officers, how payable.
27. Balance of funds to be applied, how.
28. Location to be at Douglas.

Government, how vested.

Section 1. A university is hereby instituted in this territory, the government whereof shall be vested in a board of curators.

Created a body corporate.

Sec. 2. The university is hereby incorporated and created a body politic, and shall be known by the name of "The Curators of the University of the Territory of Kansas," and by that name shall have perpetual succession, power to sue and be sued, complain and defend, in all courts of law and equity; to make and use a common seal, and to alter the same at pleasure; to take, purchase and hold, to sell, convey and otherwise dispose of lands and chattels.

Powers.

SEC. 3. The number of curators shall be twenty, five of whom shall be chosen at each session of the legislative assembly, by joint vote of the two houses, and may be removed by concurrent resolution of the two houses of the legislative assembly. They shall hold their offices for six years, and until their successors are duly elected and qualified by the governor and secretary of the territory. The district attorney and auditor of public accounts shall be curators by virtue of their several offices.

Number of curators, how chosen.

SEC. 4. No person shall be chosen a curator who shall not have attained the age of twenty-five years, and who shall not be a free white citizen of the United States, and a resident of the territory at the time of his election or appointment.

Qualification of curators.

SEC. 5. Every vacancy happening in the office of a curator, chosen by the legislative assembly, shall be supplied by appointment by the governor until the next meeting of the legislative assembly, and until a successor is duly elected and qualified.

Vacancy how supplied.

SEC. 6. The curators shall severally take an oath to support the constitution of the United States and faithfully demean themselves in office.

To take an oath of office.

SEC. 7. There shall be an annual meeting of the board on the last Wednesday in July, to be holden in the university edifice, or within one mile from the site thereof.

Annual meetings, when held.

SEC. 8. There shall be a president and a vice president of the board, who shall be chosen by the board from the members thereof; a secretary, treasurer, and such other officers of the board as they may deem necessary, who shall be appointed by the board, and shall hold their offices during the pleasure of the board.

Officers to be chosen.

SEC. 9. The president, and, if he be absent, the vice president, and, if both be absent, a curator, chosen for the occasion, shall preside at the meetings of the board, and have a casting vote in case of equal division.

Duty of the president.

SEC. 10. The president of the board, and, until his election, or, in case of his absence or disability, any three curators, shall have power to call a special meeting of the board at the place of holding the annual meeting; *provided*, they give timely notice thereof in such form as the board at its annual meeting shall by resolution prescribe, or by printed notice published in some public newspaper of the county at least ten days before the day of meeting.

May call special meetings

Proviso.

May order adjourned meetings.

Sec. 11. Adjourned meetings of the board may be by them ordered and held at such time and place as shall be by them agreed upon.

Number to constitute a quorum.

Sec. 12. At the annual meetings of the board eight curators shall constitute a board to do business, but five curators attending any special meeting shall constitute a quorum, and at any meeting a less number than a quorum may adjourn from time to time not exceeding eighteen days.

Duties of secretary.

Sec. 13. The secretary shall keep a journal of the proceedings of the board, in which the ayes and nays on all questions shall be entered if requested by any one of the curators present.

To keep record, &c.

Sec. 14. It shall be the duty of the secretary to keep and preserve all records, books and papers belonging to the board; to prepare, under the direction of the board, all their reports, estimates, &c., and record the same in a book to be kept for that purpose; and generally to do and execute all such matters and things as belong to his office, and may be required of him by the curator.

Curator to examine records.

Sec. 15. Each curator shall at all times have access to and be permitted to take copies of any or all of the records, books and papers of the board.

Duty of the treasurer.

Sec. 16. It shall be the duty of the treasurer to receive, keep and disburse all money belonging to the board, and to perform all customary acts pertaining to his office, under the direction of the curators, and to make report of the same at the annual meeting of the board.

Powers of curators

Sec. 17. The curators shall have power to make such by-laws or ordinances, rules and regulations as they may judge most expedient for the accomplishment of the trust reposed in them, and for the government of their officers, and to secure their accountability.

May confer diplomas, &c.

Sec. 18. The curators shall have authority to confer by diploma, under the common seal, on any person whom they may judge worthy thereof, such degrees as are known to and usually granted by any college or university.

Grants to be applied, how.

Sec. 19. Grants made to the curators for specified uses and purposes shall not be applied, either wholly or in part, to any other uses.

Duty of curators.

Sec. 20. It shall be the duty of the curators to provide for the protection and improvement of the site of the university as selected and established by law, to erect and continue thereon all edifices designed for the use and accommodation of the officers and students of the university, and to furnish and adapt the same to the uses of the several departments of instruction.

Powers of curators.

Sec. 21. The curators shall have power, whenever they shall deem it expedient, to appoint a president of the university, and to prescribe, by ordinance, his term of office, and the powers and duties thereof in cases not herein provided for, and to fix his compensation, to be paid out of the income of the seminary fund.

President to superintend institution, &c.

SEC. 22. It shall be the duty of the president of the university, among other things, to superintend and direct the care and management of the institution, its grounds, library, philosophical and chemical apparatus, mathematical and other scientific instruments; and to make and transmit to the curators, on or before the twenty-first day of July, in every year, a report of the state and condition thereof, containing such particulars as the curators shall require.

Curators empowerd to appoint professors.

SEC. 23. The curators are authorized to appoint the necessary professors and tutors of the university, no one of whom shall exercise the functions of any other profession during his continuance in office, and to fix their compensation and terms of office.

Auditor to perform certain duties.

SEC. 24. The auditor of public accounts shall, semi-annually, to wit, on or before the fifteenth day of July and the fifteenth day of January, prepare and transmit to the curators a statement, showing the increase of the seminary fund in the treasury subject to be applied to the support of the university.

Curators may require auditor to draw warrant, &c.

SEC. 25. The curators are authorized to cause such semi-annual increase of the funds in the treasury to be deposited in the treasury of the board, by a resolution requiring the auditor to draw his warrant on the treasury, in favor of the person named in such resolution, for the amount in the treasury.

Salaries of officers, how payable.

SEC. 26. The salary of each officer of the university shall be payable semi-annually, and it shall be the duty of the president of the board of curators to draw his warrant accordingly on the treasurer of the board, payable to the order of the officer therein named, and bearing interest at the rate of six per centum per annum from the time it is presented to the treasurer of the board for payment till paid.

Balance of funds to be applied, how.

SEC. 27. The balance of the increase of the seminary fund, after payment of salaries for each current year, shall be applied as follows: *First*, to the payment of arrears of salaries; *second*, to provide for library apparatus, cabinet, &c.; *third*, to improvement of buildings, grounds, &c.; *fourth*, surplus to be invested as provided for in the first article of this act.

Located at Douglas.

SEC. 28. The university shall, and is hereby declared to be, located in the town of Douglas, on the Kansas river; *provided*, the proprietors or trustees of said town donate at least ten acres of land, in some eligible part of the town, for the site of the university buildings: and that George W. Clark, Paris Ellison and

William Johnson are hereby appointed commissioners to select the site of the university buildings, as aforesaid.

This act to take effect and be in force from and after its passage.

CHAPTER 90.

An act to incorporate and permanently establish a Medical College at the town of Lecompton.

§ 1. Medical college at Lecompton.
2. Names of corporators.
3. Property to be applied in good faith.
4. Who to be president; duties.
5. Powers of the trustees.
6. Times of meeting.
7. Vacancies, how filled.
8. Board to appoint medical faculty; powers.
§ 9. Who may fill the chairs.
10. Stated meetings, to fill vacancies.
11. Names of chairs of instruction.
12. Professor may fill more than one chair.
13. Power to make loans, &c.
14. Power to confer degrees, &c.
15. Tie vote, how decided.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Medical college at Lecompton.

SECTION 1. That a medical college be and is hereby permanently established in the town of Lecompton, Douglas county, Kansas, and shall be known and designated by the name of "Kansas Medical College."

Names of coporators.

SEC. 2. That G. W. Clark, S. J. Jones, Daniel Woodson, H. D. McMeekin, J. H. Stringfellow, O. H. Browne, William G. Matthias, G. W. Johnson, Aristides Rodrigue, W. H. Tebbs, H. B. C. Harris, R. H. Miller, J. C. Anderson and D. L. Croysdale be and the same are hereby constituted a body politic and corporate, to be known by the name of the trustees of Kansas Medical College, and by that name shall have perpetual succession and a common seal; may sue and be sued, plead and be impleaded, defend and be defended, in any court of law or equity in this territory; and shall have full power to hold, by gift, grant, devise or otherwise, any lands, tenements, hereditaments, moneys, rents, goods and chattels, of whatsoever kind the same may be, which have been or hereafter may be given, granted or devised to, or purchased by them for and to the use of said college; and may sell and dispose of the same, or any part thereof, or lease or rent, or improve the same in such manner as they shall consider most conducive to the interest and prosperity of said college.

Property to be applied in good faith.

SEC. 3. The property, real and personal, authorized to be held by said corporation, by virtue of this act, shall be held and applied in good faith to the purpose of a medical and chemical education, and for no other purpose; and the endowment or other surplus funds of said college may be loaned at any rate of interest, not exceeding fifteen per cent per annum.

Who to be president of board. Duties.

SEC. 4. The board of trustees shall choose one from among their number to act as president for said board, whose duty it shall be to preside over the deliberations of said board when in session, and shall have power to call a special meeting of the board when he or any two of the trustees shall deem it expedient; and any five of the said trustees, at any regular, or adjourned, or special meeting, shall constitute a quorum for transacting business; in case of absence of the president, any member of a quorum may be appointed president *pro tem.*, to preside over that meeting only.

Powers of the trustees

SEC. 5. The trustees shall be a corporate body, invested with all the chartered authorities granted to any corporate or literary institution for the enactment of such by-laws and regulations to govern their own body and the property of the college, and as shall best facilitate the moral, intellectual and physical interests of the students; *provided*, their power is not so construed as to interfere with the religious liberty of any trustee, student or employee.

Times of meeting.

SEC. 6. The board of trustees shall meet on the first Mondays of January and of April, of every year, which meetings shall be considered stated meetings; at which times, only, vacancies in said board of trustees can be filled.

Vacancies, how filled.

SEC. 7. When a vacancy shall occur in the board of trustees, by death, resignation, removal or otherwise, the same shall be filled by the remaining board; *provided*, such person appointed to fill such vacancy shall not be one of public or known bad character.

Board to appoint a medical faculty. Powers.

SEC. 8. The board of trustees shall appoint a medical faculty, to consist of at least eight medical or other graduates, who shall have full power to form a board to regulate their own affairs, make by-laws for their own government, direct what course and in what manner instructions to the classes shall be conducted; *provided*, that in the establishment of prices for fees of instruction and tuition, (except private office tuition,) and conferring of degrees, the board of trustees and board of medical faculty shall form a joint session to act in common in regulating the prices to be imposed for such instruction; but this provision is not to be, nor shall it be understood or so construed as to enable the board of trustees to control the mode and manner of imparting medical, surgical and chemical instruction, which exclusively rests in the board of the medical faculty.

Who may fill the chairs.

SEC. 9. Any member of the board of trustees may be appointed to fill any of the chairs of instruction hereinafter mentioned, but no such member shall have more than one vote on joint session in a ballot, although he may be a member of both boards.

Stated meetings to fill vacancies.

SEC. 10. Any vacancy in the board of the medical faculty, by death, resignation or removal, can be filled only on the days of stated meetings, unless sooner called by the president.

Names of chairs of instruction.

SEC. 11. The following chairs of instruction are hereby enacted, and may not be changed, altered or divided, without the consent of two-thirds of the board of the medical faculty: *First*, theory and practice of medicine; *second*, general descriptive and pathological anatomy; *third*, materia medica, botany, therapeutics and pharmacy; *fourth*, chemistry and mineralogy; *fifth*, obstetrics, diseases of women and children, and clinical midwifery; *sixth*, principles and operations of surgery and surgical anatomy; *seventh*, physiology, pathology and microscopic anatomy; *eighth*, institutes of medicine and medical jurisprudence, natural history and geology.

Professor may fill more than one chair.

SEC. 12. The same professor may fill more than one chair in case of a vacancy, and until such vacancy be filled; but this shall be temporary, and is intended only to prevent such vacancy from interrupting the course of instruction; the chair of natural history and geology shall be optional, and supported only by voluntary subscriptions, and such professor shall have no part in the board of the medical faculty.

Power to make laws for the erection of buildings.

SEC. 13. The board of trustees may and are hereby authorized to obtain a loan or loans for the erection of such buildings and improving the grounds adjoining, for the use of said college, and other buildings necessarily connected, and issue certificates of such loan or loans, in sums not less than fifty dollars; which certificates may bear interest not exceeding fifteen per cent. per annum, to be secured by bond or mortgage upon the property of said college.

Power to confer degrees.

SEC. 14. The medical faculty of the college shall have full power to confer degrees, such as are usually conferred by medical colleges, and to grant diplomas attesting the same.

Tie vote, how decided.

SEC. 15. In case of a tie vote in the board of the medical faculty, the president of the board of trustees shall decide by his vote.

CHAPTER 91.

An act to incorporate the Kansas University.

§ 1. Kansas University established.
2. Names of corporators.
3. Powers of the corporation.
4. Property to be applied in good faith.
5. Notice to be given of first meeting.
6. Trustees ex-officio.
7. Vacancies, how filled.
8. Treasurer to give bond.
§ 9. Duties of secretary.
10. Powers of board of trustees.
11. May prescribe course of study.
12. Faculty may prescribe rules.
13. Located at Le~~compton.~~ avenworth
14. To proceed to erect buildings, when.
15. Powers of board of trustees.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Kansas University established.

Section 1. An institution of learning is hereby authorized and established at the city of Leavenworth, to be known as the "Kansas University," designed to promote and encourage the diffusion of knowledge in all the branches of learning, including the literary, law and medical departments of instruction.

Names of corporators.

Sec. 2. That for the government of said college the following persons, to wit, John Calhoun, Samuel D. Lecompte, R. R. Rees, David Lykins, William P. Richardson, James Davis, J. H. Day, Thomas C. Shoemaker, Mark W. Delahay, John A. Halderman, Lucien J. Eastin, Benjamin F. Simmons, William G. Mathias, H. D. McMeekin, A. Payne, J. C. Anderson, James M. Lyle, F. J. Marshall, O. H. Browne, H. J. Strickler, A. M. Coffey, H. B. C. Harris, John W. Foreman, John H. Stringfellow, Thomas W. Waterson and John Martin, and their successors in office, are hereby created a body politic and corporate, and shall have perpetual succession and a common seal; and in their corporate capacity may sue and be sued, plead and be impleaded, defend and be defended against, in any court of law or equity in this territory.

Powers of the corporation.

Sec. 3. The persons named in the second section of this act, and their successors in office, shall be known and styled, "The Trustees of Kansas University," and shall have full power in their corporate capacity to hold, by gift, grant, demise, devise, or otherwise, any lands, tenements, hereditaments, moneys, rents, goods or chattels, of what kind soever the same may be, which are or may hereafter be given, granted, demised, devised to, or purchased by them, for and to the use of the aforesaid university; and may sell and dispose of the same or any part thereof, or lease, rent, or improve in such manner as they shall think most conducive to the interests and prosperity of said university.

Property to be applied in good faith.

SEC. 4. That the property, real and personal, authorized to be held by said corporation by virtue of this act, shall be held and applied in good faith to the purposes of education in the various departments of literary, legal and medical instruction, according to the provisions of this act, and for no other purpose; and the said corporation shall not deal in exchange, discount of notes, or in any commercial business or pursuit.

Notice to be given of first meeting.

SEC. 5. That the person first named herein as trustee, or, in case of his neglect or refusal to act, the next named, shall give notice of the time and place for holding the first meeting of the trustees; and if a quorum shall not attend, a less number may adjourn from day to day and send for absent members, and, on the attendance of a quorum thereof, they shall appoint a president, secretary and treasurer of their own body, and shall then, and from time to time, make and establish such by-laws as they may deem necessary and proper, not inconsistent with the constitution or laws of the United States or of the territory of Kansas, and shall determine the number of regular meetings they will hold in each year, and fix the time of the next meeting.

Trustees ex-officio.

SEC. 6. That the governor and secretary (of state or territory, as the case may be) shall be ex-officio trustees of said university.

Vacancies, how filled.

SEC. 7. The trustees shall fill all vacancies that may occur in their board by death, resignation or refusal to act, and for the first meeting seven shall constitute a quorum for the transaction of business, and thereafter the trustees shall fix in the by-laws the number necessary to constitute a quorum; and the trustees at their first meeting shall cause the names of trustees to be recorded in the office of the secretary of state or territory, and in like manner the names of all trustees that may thereafter be appointed.

Treasurer to give bond.

SEC. 8. Before entering upon the discharge of the duties of his office, the treasurer shall give bond and security for the faithful discharge of the duties of his office, the sufficiency of his securities to be approved by a majority of the board of trustees, and that no member of the board of trustees shall be received as such security; the treasurer shall take charge of the funds of the university which may be placed in his hands by order of the board, and shall perform such other services as may be prescribed by the board.

Duties of the secretary.

SEC. 9. The secretary shall keep a fair record of the proceedings of the board, which he shall enter in a book to be provided for that purpose, subject to the examination and inspection of all donors to the institution, and shall perform such other duties as may be prescribed by the board.

Powers of board of trustees.

SEC. 10. The board of trustees shall have power to appoint, from time to time, a president, professors, teachers and other necessary officers to conduct and manage the university, in all its various departments of law, medical and literary learning, and to remove them from office if necessary, and to fix their compensation, and to increase or diminish the same as circumstances may require.

May prescribe course of study.

SEC. 11. The board of trustees may prescribe the course of study to be pursued in said university and the terms of admission into the same, and to make and enforce such other rules and regulations as may be deemed necessary for the good government and discipline of the same; and said board of trustees may commence the operations of said university in either one or two or all of the departments hereinbefore set forth.

Faculty may prescribe rules, &c.

SEC. 12. That the faculty of said university shall prescribe such rules and regulations in the conferring of honors and giving diplomas as they may deem useful and necessary.

Located at ~~Lecompton.~~ Leavenworth

SEC. 13. That said university shall be located at the city of Leavenworth.

To proceed to erect buildings, when.

SEC. 14. That so soon as the necessary funds can be raised by donation from congress, the territory, or individuals, or otherwise, as will justify, in the opinion of the board of trustees, a commencement of the purposes of said university, they may then proceed to erect buildings and make all preparations necessary for instruction in one, two, or all of the departments of learning hereinbefore set forth; *provided*, that nothing herein contained shall be construed to give said university any preference or advantage over any other university or institution of learning incorporated by the present legislature, but that, in reference to endowment or legislative aid by gift, grant, directly or by implication, all shall stand upon the same footing, and be entitled to the same rights and advantages.

Powers of board of trustees.

SEC. 15. The board of trustees may take such measures in regard to the endowment of said university as they may think proper.

This act to take effect and be in force from and after its passage.

CHAPTER 92.

An act to establish a territorial road from a point opposite St. Joseph, in Missouri, to Fort Riley, in the territory of Kansas.

§ 1. Commissioners appointed, &c.
2. Time and place of meeting.
§ 3. If not, at as early a day as practicable.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners appointed.

SECTION 1. That Albert Head, Carey B. Whitehead and Thos. B. Cramer be and are hereby appointed commissioners to locate and establish a territorial road from a point on the western bank of the Missouri river, opposite St. Joseph, in Missouri, by the nearest and best route, to Fort Riley, *via* the town of Pawnee.

Direction of road.

Time and place of meeting.

SEC. 2. That said commissioners shall meet at Milton E. Bryant's, on the first of October, eighteen hundred and fifty-five, and shall proceed to locate and establish said road, according to the provisions of an act entitled "An act to lay out territorial roads in the territory of Kansas."

Shall meet as soon as practicable.

SEC. 3. If said commissioners should not be enabled to meet at the specified time, as above, they shall meet at as early a day thereafter as practicable.

This act to take effect and be in force from and after its passage.

CHAPTER 93.

An act to establish a territorial road from Whitehead, to intersect the St. Joseph and Fort Riley road.

§ 1. Commissioners appointed, &c.
2. Commissioners to take an oath; time and place of meeting.
§ 3. Vacancies, how filled
4. Shall employ a surveyor.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners appointed.

SECTION 1. That Uriah Griffith, Isaac G. Weld and James R. Whitehead be and they are hereby appointed road commissioners, whose duty it shall be to meet at the house of James R. Whitehead, on the first Monday in November next, and thence proceed to view and mark out a territorial road, commencing at the town of Whitehead, and running in a western direction by the farm of Joel P. Blair, or upon the best and most practicable route, until it intersects a territorial road to be marked out from St. Joseph, Missouri, to Fort Riley; thence to Lecompton. Direction of road.

SEC. 2. The above named commissioners, before entering on the discharge of the duties assigned them by this act, shall severally take an oath, before some officer authorized by law to administer the same, faithfully to perform the duties assigned them by this act; and should they fail to meet on the day herein designated, they shall meet on a subsequent day to be agreed on by said commissioners. Commissioners to take oath. Time and place of meeting, &c.

SEC. 3. Should a vacancy occur in said board of commissioners, the remaining commissioner or commissioners shall appoint some suitable person or persons to act as such. Vacancy, how filled.

SEC. 4. Said commissioners shall employ a surveyor and two chain carriers to accompany them; and shall cause their surveyor to make out a complete plat of said road, which shall be filed in the office of the clerk of the county court of the respective counties through which said road shall pass. Shall employ a surveyor.

This act to take effect and be in force from and after its passage.

CHAPTER 94.

An act to declare a certain road a territorial road.

§ 1. What road a territorial road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. The road leading from Fort Scott, by way of "Marmeton City," P. D. Cuming's, Russel's crossing and Turkey creek, intersecting the road leading from Gerard's or Polk's old crossing on the Big Osage river, to Kee-i-tone, is hereby declared a territorial road, and shall be kept in repair, as is provided for by law. Direction of road.

This act to take effect and be in force from and after its passage.

CHAPTER 95.

An act to declare a road, leading from Fort Scott to the Missouri state line, at or near the "Philip's crossing" of the Upper Drywood creek, a territorial road.

§ 1. What road declared a territorial road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road. SECTION 1. That the road leading from Fort Scott, called the Drywood road, to "Philip's crossing," on the Upper Drywood, or as near said crossing as the line of this territory will admit, is hereby declared a territorial road, and shall be kept in repair, as is provided by law.

This act to take effect and be in force from and after its passage.

CHAPTER 96.

An act to declare a certain road a territorial road.

§ 1. What a territorial road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road. SECTION 1. That all that certain road leading from the town of Fort Scott to the Catholic Osage Mission, known as the Mission road, be and the same is hereby declared a territorial road, and shall be kept open and in repair in like manner as roads that may be received and located in said territory.

This act to take effect and be in force from and after its passage.

CHAPTER 97.

An act establishing a territorial road from the town of Iowa Point to Eujatah, on the Arkansas river.

§ 1. Commissioners appointed, &c.
2. Time and place of meeting.
3. Vacancy, how filled.
§ 4. Duty of the secretary of the territory to inform commissioners of this act.
5. Plat to be filed, &c.
6. Additional fee.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. William O. Yager, George Washington Berry and William D. Beeler are hereby appointed commissioners for the purpose of viewing and marking out a territorial road from the eastern boundary of the territory, commencing at the town of Iowa Point, to run thence on the most suitable route, by way of the town of Tecumseh, "One Hundred and Ten," Columbia, and through to the town of Eujatah, on the Arkansas river. Commissioners appointed. Direction of road.

SEC. 2. The commissioners shall meet for this purpose on the first day of September next, or on some subsequent day, to be agreed upon by a majority of their number. Time and place of meeting

SEC. 3. If a vacancy occur in the board of commissioners, the remaining commissioners shall fill the same by the appointment of some suitable person or persons. Vacancy how filled.

SEC. 4. It shall be the duty of the secretary of this territory to cause a certified copy of this act to be forwarded to the first named commissioner, whose duty it shall be to notify the other two commissioners. Duty of secretary of territory to notify commissioners, &c., of this act.

SEC. 5. That said commissioners shall cause to be filed in the office of the county clerk of the respective counties through which they may locate said road, a report and plat of so much of said road as may lie in said county, and the clerk of said county shall spread the same on the records of the county. Plat to be filed.

SEC. 6. For every report and plat so filed, the surveyor shall receive an additional sum of two dollars. Additional fee.

This act to take effect and be in force from and after its passage.

CHAPTER 98.

A bill entitled "an act establishing territorial roads."

§ 1. What road is declared a territorial road.
2. Another road declared a territorial road.
§ 3. Commissioners appointed, &c.
4. Duty of commissioners, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That a road, commencing at Fort Scott, running on the most direct route to the Little Osage, west of the mouth of Lost creek; thence on a dividing ridge to a ford on Little Sugar creek, at L. C. Niswonger's; thence along the Indian trace to a crossing on Big Sugar creek, at the old Catholic Mission; thence to Mr. Kirk's; thence across Pottawatamie creek, at Henry Sherman's; thence on the most direct route to the Willow Springs, be and the same is hereby declared a territorial road.

Direction of the second.

SEC. 2. That a road commencing at Niswonger's, on the road described in the first section of this act, crossing Little Sugar creek east of his farm; thence in a direct line to Sugar Mound, on Little Sugar creek; thence east to the crossing on the Marais des Cygnes, at Jemse's old trading post, be and the same is hereby made a territorial road.

Commissioners appointed, &c.

SEC. 3. That John E. Browne, L. C. Niswonger and John Smith, on West Middle creek, be and they are hereby appointed commissioners to view and mark out said road, except so much thereof as lies between Sugar Mound and Pottawatamie creek.

Duty of commissioners.

SEC. 4. That said commissioners are hereby required to make and keep a written statement of the roads, as they may make, mark or establish said roads, which statement shall be evidence of the establishment of said roads according to the provisions of the first and second sections of this act.

This act to take effect and be in force from and after its passage.

CHAPTER 99.

An act to provide for laying out and establishing a territorial road, from the point where the Atchison, Kickapoo and Leavenworth roads converge by way of Osawkee and Tecumseh, to intersect the Santa Fe road at or near "One Hundred and Ten Creek."

§ 1. Commissioners appointed, &c.
2. To erect finger-boards, &c.
§ 3. Power to appoint surveyor, &c.
4. Any one of the commissioners may act as surveyor.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Henry N. Watts, F. M. McGee and George Dyer be and are hereby appointed commissioners to lay out and establish a territorial road, beginning at or near Hickory Point, where the roads from Atchison, Kickapoo and Leavenworth converge; thence in a westerly direction to the town of Osawkee, passing through the said town; thence in a south-westerly direction to the town of Tecumseh, crossing the Kansas river at said town; thence as may be deemed the most direct and practicable route to intersect the Santa Fe road at or near "One Hundred and Ten." Commissioners appointed. Direction of road.

SEC. 2. The commissioners shall have power to erect finger-boards along said road, and build bridges, wherever they deem it necessary. Commissioners to erect finger-boards.

SEC. 3. The commissioners shall have power to appoint one surveyor and two chain carriers, whose duty it shall be to survey and measure said road, under the direction of the said commissioners; and said surveyor shall make out a plat thereof, and file the same in the office of the tribunal for transacting county business, in the various counties through which said road shall run. Appoint surveyor, &c. Duty of, &c.

SEC. 4. Any one of the commissioners may act as surveyor; and, in the absence or non-attendance of any one or more of the commissioners, a majory of the number appointed shall have power to appoint others, and the day on which they will meet; and any one of said commissioners, in the absence of others, shall have power to adjourn, from time to time, until a quorum shall meet. Any one commissioner may act as surveyor.

This act to take effect and be in force from and after its passage.

CHAPTER 100.

An act to establish a territorial road from the town of Kickapoo, in the territory of Kansas, to intersect the Military road leading from Fort Leavenworth to Fort Riley.

§ 1. What road is declared a territorial road. 2. Commissioners appointed, &c.; time and place of meeting.	§ 3. May employ a surveyor; compensation of, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Territorial road.

SECTION 1. That a territorial road, beginning at the town of Kickapoo, in the territory of Kansas, and running thence in a south-western direction through the valley of Plum creek to a point on the high prairie, between Plum creek and Stranger creek, at which point the California road leaves the Military road leading from Fort Leavenworth to Fort Riley, be and hereby is established.

Commissioners.

Time and place of meeting.

SEC. 2. Robert Thompson, James Basket and Samuel Merchant are hereby appointed commissioners, who shall meet at the town of Kickapoo aforesaid, on the second Monday in September next, or at any time after they may agree upon for the purpose of reviewing and marking out said territorial road.

May employ a surveyor.

Compensation.

SEC. 3. The said commissioners may employ a surveyor and chain carriers to survey said road, who, together with the commissioners, shall be paid for their services a reasonable compensation, not exceeding two dollars per day for each commissioner, three dollars for said surveyor, and one dollar per day for each chain carrier, to be paid out of the county treasury when the road is established; *provided,* that, if said road extend through more than one county, such payment is to be made out of the treasuries of the respective counties through which said road passes, in proportion to the number of miles of said road in each county.

This act to take effect and be in force from and after its passage.

CHAPTER 101.

An act to establish a road from Osawkee to Grasshopper Falls.

§ 1. Road established from Osawkee to Grasshopper Falls.
§ 2. Commissioners to establish and locate said road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That a road be and the same is hereby established from Osawkee, by the most direct route, to Grasshopper Falls, in the territory of Kansas. Road from Osawkee to Grasshopper Falls.

SEC. 2. That George M. Dyer, A. J. Whitney and O. B. Tebbs be and they are hereby appointed commissioners to locate and establish said road. Commissioners to locate said road.

This act to take effect and be in force from and after its passage.

CHAPTER 102.

An act to establish a territorial road from Leavenworth city to Osawkee, via Alexandria.

§ 1. Commissioners appointed.
2. Finger-boards to be put up on said road.
3. Power to appoint surveyor, &c.
§ 4. Vacancies how filled, &c.
5. Compensation of, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That A. J. Scott, Balaam Buzbee, S. D. Pitcher and J. Westcott be and are hereby appointed commissioners to lay out and establish a territorial road from Leavenworth city, on the nearest and best route, *via* Alexandria to Osawkee. Commissioners. Direction of road.

SEC. 2. Said commissioners shall erect finger-boards along said road wherever it may be deemed necessary. Finger-boards.

SEC. 3. The commissioners shall have power to appoint one surveyor and two chain carriers, whose duty it shall be to survey and measure said road, under the direction of said commissioners; and said surveyor shall make out a plat thereof, and file the same in the office of the clerk of the tribunal transacting county business, in the several counties through which said road may run. Appoint surveyor, &c. Plat to be filed, &c.

SEC. 4. In the absence of any one or more of the commissioners, a majority of the number appointed shall have power to appoint others, and the day on which they will meet. Vacancies, how filled.

Compensation.

SEC. 5. Said commissioners, surveyor and chain carriers shall receive a reasonable compensation for their services in establishing said road, to be paid out of any money in the treasury, not otherwise appropriated, of the county or counties through which said road may be located.

This act to take effect and be in force from and after its passage.

CHAPTER 103.

An act to locate a territorial road.

§ 1. Commissioners appointed, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That Martin P. Rively, Alexander Russel and John W. Broaddus be and are hereby appointed commissioners to locate a territorial road from Leavenworth city to M. P. Rively's store, on Salt creek, *via* the United States prairie farm.

This act to take effect and be in force from and after its passage.

CHAPTER 104.

An act entitled "an act to locate a territorial road."

§ 1. Commissioners appointed, &c.
2. Time and place for meeting.
§ 3. Power to fill vacancies.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

Direction of road, &c.

SECTION 1. That S. D. Pitcher, Henry Adams, W. Sublette and A. Q. Price be and are hereby appointed commissioners to locate and establish a territorial road from Wyandotte ferry, on Kansas river, by the town of Delaware, thence by the city of Leavenworth, thence by the town of Kickapoo, thence by the town of Port William, thence by the town of Atchison, thence by the town of Doniphan, thence by the town of Iola, thence by the town of Iowa Point, to a point on the territorial line between the territories of

Kansas and Nebraska, opposite Roy's ferry over the Great Nemaha river, on the nearest and best route.

SEC. 2. Said commissioners shall meet at the city of Leavenworth, on the tenth day of September, eighteen hundred and fifty-five, or as soon thereafter as may be practicable, and proceed to locate and establish said road according to law. Time and place of meeting.

SEC. 3. Any two of said commissioners shall have power to fill vacancies in their own body which shall in any case occur, and any three of said commissioners shall be authorized to carry out the provisions of this act. Power to fill vacancies.

This act shall take effect and be in force from and after its passage.

CHAPTER 105.

An act to locate a territorial road from the Missouri state line to Fort Atkinson.

§ 1. Commissioners appointed.
2. Time and place of meeting.
3. Vacancies, how filled.
4. Power, &c., appoint a surveyor, &c.
5. Compensation of commissioners and surveyor.
§ 6. Expenses to be paid out of the treasury of the territory.
7. Duty of secretary of territory to notify commissioners.
8. Plat to be filed, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. James Ray, William Painter and James S. Barbee are hereby appointed commissioners for the purpose of viewing and marking out a territorial road from the state line of the state of Missouri, commencing at a point known as Texas or James M. Linn's store, being where the road leading from the towns of Bolivar and Fremont to Fort Scott strikes the east line of the territory of Kansas, to run thence the most eligible route by way of the town of Fort Scott, Cofachiqui city, then to cross the Neosho river, thence the nearest and best route to Fort Atkinson, on the Arkansas river. Commissioners. Direction of road.

SEC. 2. The commissioners shall meet for this purpose on the first day of September next, or on some subsequent day to be agreed upon by a majority of their number. Time and place of meeting.

SEC. 3. If a vacancy occur in the board of commissioners, the remaining commissioners shall fill the same by the appointment of some suitable person or persons. Vacancies, how filled.

Power of, &c.

Sec. 4. Said commissioners so appointed shall have full power to appoint the necessary surveyor or surveyors, chain carriers, stake drivers, axemen and teamsters, together with providing the necessary outfit, provisions and provender.

Compensation of commissioners and surveyor.

Sec. 5. The commissioners and surveyors shall each receive three dollars per day, and all others employed under section (4) four, shall receive the sum of two dollars per day exclusive of outfit, &c., except the teamster, who shall receive an additional sum in proportion to the team employed, to be certified and allowed by said commissioners.

Expenses to be paid out of the treasury of the territory.

Sec. 6. The whole expense of said road shall be paid out of the treasury of this territory upon an application being made to the proper officer, setting forth the number of days, persons employed, &c., &c., &c., verified by the affidavit of at least two of said commissioners.

Duty of secretary of territory to notify commissioners.

Sec. 7. It shall be the duty of the secretary of the territory to cause a certified copy of this act to be forwarded to the first named commissioner, whose duty it shall be to notify the other two commissioners.

Plat to be filed, &c.

Sec. 8. That said commissioners shall cause to be filed in the county clerk's office of each county through which they may locate said road, a report and plat of so much of said road as may lay in such county, which clerk shall spread the same on the records of said county.

This act to take effect and be in force from and after its passage.

CHAPTER 106.

An act entitled an "act to locate a territorial road from a point above Franklin, on the California road, via the lake and Kansas river shore, to the town of Lecompton, Kansas territory."

§ 1. Commissioners appointed.

§ 2. Duty of commissioners; time and place of meeting, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

Section 1. That D. G. W. Johnson, Aristides Rodrigue and Irwin Todhunter be and are hereby appointed commissioners to locate and establish a territorial road from a point above the town of Franklin, on the California road, *via* the lake and shore of Kansas river, to the town of Lecompton.

Location of road, &c.

SEC. 2. Said commissioners shall meet at the residence of A. Rodrigue, near Lecompton, on or before the first day of December next, or as near that time as practicable, and proceed to locate and establish said road agreeably to the provisions of an act entitled "an act to provide for locating territorial roads in and for the territory of Kansas." Place of meeting. Duty, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 107.

An act entitled "an act to establish a territorial road from the Willow Springs to Douglas."

§ 1. Commissioners appointed. | § Duty of commissioners.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Enoch Reed, George W. Bryant and John Campbell be and are hereby appointed commissioners to locate and establish a territorial road from the Willow Springs, on the Santa Fe road, by way of Campbell's and McGee's, on the Wakarusa, to Douglas. Commissioners. Direction of road.

SEC. 2. Said commissioners shall meet at the house of Mr. Campbell, on or before the twentieth day of November next, or as near that time as practicable, and proceed to locate and establish said road agreeably to the provisions of an act entitled "an act to provide for locating territorial roads in and for the territory of Kansas." Duty, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 108.

An act to establish a territorial road from the territorial line, near Westport, Missouri, to Fort Scott, in the territory of Kansas.

§ 1. What road is declared a territorial road.
2. Commissioners appointed.
§ 3. Compensation of commissioners.
4. Power to fill vacancies.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That there be and is hereby established a territorial road, beginning at a point in Kansas territory, near West- Direction of road.

port, Missouri; running thence, by the way of the Wea Mission, Miami Mission and Bellard's Ford, in said territory, to Fort Scott.

Commissioners. SEC. 2. That B. P. Campbell, George Bowlin and James McHenry, of said territory, are hereby appointed commissioners, whose duty it shall be to view and mark out said road as above designated.

Compensation of commissioners. SEC. 3. The said commissioners shall receive as compensation for their services at the rate of one dollar and fifty cents per day, each, for every day necessarily employed in such viewing and marking out said road; the counties through which said road shall pass shall pay the expenses of locating the same.

Power to fill vacancies. SEC. 4. In case of refusal to serve, or otherwise detained from said service, on the part of either of the commissioners above appointed, the remaining commissioners or commissioner shall have power to fill said vacancy or vacancies.

This act to take effect and be in force from and after its passage.

CHAPTER 109.

An act to declare a certain road, from the Shawnee methodist church south, to the town of Tecumseh, a territorial road.

§ 1. What road is declared a territorial road. | § 2. Duty of counties through which road passes to keep it in good repair.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road. SECTION 1. That the present road, commencing near the Shawnee methodist church, in the territory of Kansas, and running by the way of Wm. Donaldson's, near Mill creek; thence by Blue Jackets, on Wakarusa creek; thence by Big spring to the town of Tecumseh, be and the same is hereby declared a territorial road.

Counties to keep road in good repair. SEC. 2. It shall be the duty of the counties through which said road passes to cause said road to be kept in good repair as other territorial roads.

This act to take effect and be in force from and after its passage.

CHAPTER 110.

An act to declare a certain road a territorial road.

§ 1. What road declared a territorial road. | § 2. Road to be kept open and in good repair.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. The road as now located and opened from Fort Leavenworth to Fort Scott, known as the Military road, is hereby declared a territorial road. Direction of road.

SEC. 2. Said road shall be kept open and in repair as may be provided for by the laws regulating roads and highways. Road to be kept in good repair.

This act to take effect and be in force from and after its passage.

CHAPTER 111.

An act to establish a territorial road from the town of Delaware, on the Missouri river, to the town of Calhoun, on the Kansas river.

§ 1. Commissioners appointed; empowered to locate road.
§ 2. Duty of commissioners; place of meeting, &c.
3. Vacancy how filled.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. James Kuykendall, sr., James Wilson and William Christison be and they are hereby authorized and empowered to locate and establish a territorial road from the town of Delaware, on the Missouri river, to the town of Calhoun, on the Kansas river, by the most practicable route. Direction of road.

SEC. 2. The said commissioners, above named, shall meet on any day and at any place they may agree upon, and proceed to locate the said road, commencing at the town of Delaware, on the Missouri river; thence, by the most practicable route, to the town of Calhoun, on the Kansas river, in the territory of Kansas. Place of meeting.

SEC. 3. Should a vacancy occur, the remaining commissioners shall fill such vacancy. Vacancy, how filled.

This act to take effect and be in force from and after its passage.

CHAPTER 112.

An act to locate and establish a territorial road from the town of Atchison to the town of Osawkee.

§ 1. Commissioners appointed.
2. Time and place of comm'rs' meeting.
§ 3. Vacancy, how filled.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners. SECTION 1. That Eli Mason, Archibald Ellison and George F. Dyer be and are hereby appointed commissioners to locate and establish a territorial road from the town of Atchison, Kansas territory, to the town of Osawkee, on the Military road from Fort Leavenworth to Fort Riley. Direction of road.

Time and place of meeting. SEC. 2. That said commissioners shall meet on or before the first day of November, or as soon thereafter as practicable, and shall proceed to lay out and establish said road agreeably to the provisions of an act entitled "An act to provide for locating roads in and for the territory of Kansas."

Vacancy, how filled. SEC. 3. Any two of said commissioners shall be empowered to fill a vacancy occasioned by death, or refusal of the third to serve.

This act to take effect and be in force from and after its passage.

* * *

CHAPTER 113.

An act to establish a territorial road from a point on the old California road, on the west side of Little Wakarusa, to Mathew Rule's, on Big Wakarusa.

§ 1. Commissioners appointed.
§ 2. Time and place of commissioners' meeting.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners. SECTION 1. That George W. Berry, Charles Mattingly and Solomon Kenady be and are hereby appointed commissioners to locate and establish a territorial road from a point on the west bank of the Little Wakarusa, on the old California road; thence, by way of the Mounds, to the crossing of the Big Wakarusa, at Direction of road.

what is called Blanton's crossing; thence up said stream, by the way of Mr. Sayha's, Alfred Justice's, Solomon Kenady's and Charles Mattingly's, to Mathew Rule's, on said Wakarusa, where the old California road crosses said stream, from One Hundred and Ten to Kansas river.

Time and place of commissioners' meeting.

SEC. 2. Said commissioners shall meet at the house of Solomon Kenady, on or before the first of December next, or as near that time as practicable, and proceed to locate and establish said road, agreeably to the provisions of an act, entitled "An act to provide for locating territorial roads in and for the territory of Kansas."

This act to take effect and be in force from and after its passage.

CHAPTER 114.

An act to establish a territorial road from St. Joseph to Marysville.

§ 1. What road is to be established, direction, &c.
2. Commissioners to select a surveyor, &c.
§ 3. Compensation of commissioners.
4. Time and place of meeting.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road, &c.

SECTION 1. That a territorial road shall be established from a point on the west bank of the Missouri river, opposite the town of St. Joseph, in Buchanan county, Missouri, to the town of Richmond, on the Great Nemaha; thence to the town of Woodson, located on the Vermillion branch of Big Blue river; thence to the town of Marysville, on the Big Blue river, in the territory of Kansas; and that Jackson C. Thompson, Carey B. Whitehead and Thomas J. B. Cramer be and are hereby appointed commissioners to locate, mark and establish said road.

Commissioners.

Commissioners shall select a surveyor.

SEC. 2. That the commissioners named in the first section of this act are hereby authorized to select from their own number, or elsewhere, a suitable person, who shall, under the direction of said commissioners, survey and measure said road, and make out a report of the same to said commissioners; which, upon approval by them, shall be signed by said commissioners and surveyor, and filed for record in the office of county recorder, in the respective counties through which said road shall be located.

Duty, &c.

Compensation of commissioners.

SEC. 3. The said commissioners shall be allowed two dollars per day for the time occupied in viewing and locating said road, and the said surveyor shall be allowed three dollars per day for the time occupied by him in surveying said road, which shall be paid out of the county treasury of the respective counties through which said road shall be located, in proportion to the number of miles of said road contained in such county respectively.

Time and place of meeting.

SEC. 4. *And be it further enacted*, that said commissioners shall meet at the house of C. Bryan, on the fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-five, or some subsequent day, and proceed to locate said road.

This act to take effect and be in force from and after its passage.

CHAPTER 115.

An act to establish a territorial road from a point opposite Westpoint, in Missouri, to Cofachiqui, by the way of Ballard and Taylor's ford, and the Catholic Mission.

§ 1. What road is to be established.
2. Commissioners appointed, oath, &c.
§ 3. Compensation, &c.
4. In case of refusal to serve.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That a territorial road be and is hereby established from the Missouri state line near Westpoint, in Missouri, to Cofachiqui, in the territory of Kansas; said road to run by the way of Ballard and Taylor's ford on the Marais des Cygnes, the Catholic Mission on Big Sugar Creek, thence on to Cofachiqui.

Commissioners appointed, &c.

SEC. 2. William Clark, Briscoe Davis and John Brown, residents of said territory, be and are hereby constituted and appointed commissioners, whose duty it shall be to view and mark out the said road, from beginning to the ending, by the way as above designated.

Compensation, &c.

SEC. 3. The said commissioners shall receive as compensation for their services at the rate of one dollar and fifty cents per day, each, for every day necessarily employed in such viewing and marking out said road; the counties through which said road shall pass shall pay the expenses of locating the same.

In case of refusal to serve, &c.

SEC. 4. In case of refusal to serve, or otherwise detained from such service, on the part of either of the commissioners above appointed, the remaining commissioners shall have power to appoint and fill such vacancy or vacancies.

This act to take effect and be in force from and after its passage.

CHAPTER 116.

An act to establish a territorial road from opposite Boston, Missouri, to a point on the California road, at or near the Half-way Grove, in said Kansas territory.

§ 1. What road is to be established. | § 2. Direction of road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That a territorial road be and is hereby established from a point opposite Boston, in Missouri, to a point on the California road, at or near the Half-way Grove, in said territory of Kansas. What road is established.

SEC. 2. Said territorial road shall run by the way of Smithton, in said territory, to the point above designated. Direction of road.

This act to take effect and be in force from and after its passage.

CHAPTER 117.

An act supplemental to an act, entitled "an act to establish a territorial road from opposite Boston, in Missouri, to a point on the California road, at or near the Half-way Grove, in the territory of Kansas."

§ 1. Commissioners to be appointed; duty of, &c.
2. Direction of road.
§ 3. Surveyor to be appointed, &c.
4. Vacancy, how filled.
5. Duty of the secretary of the territory.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Porter S, Roberts, John W. Smith and William Sally are hereby appointed road commissioners, whose duty it shall be to meet at the town of Smithton, on the first Monday in November next, or as soon thereafter as practicable, to be agreed upon by the said commissioners, and from thence view and mark out the road described in the above act. Commissioners.

SEC. 2. The commissioners appointed in the preceding section are hereby required to continue said road from the point where it intersects the California road, on the best and most practicable ground, until it intersects the road to be marked out from Whitehead to Lecompton. Direction of road.

Surveyor to be appointed, &c.

Sec. 3. The commissioners shall appoint a competent surveyor and the chain carriers, who, together with the commissioners, shall take an oath before some officer competent to administer the same, to execute faithfully the provisions of this act.

Vacancy, how filled.

Sec. 4. Should a vacancy or vacancies occur in the said board of commissioners, the remaining commissioner or commissioners shall fill such vacancy or vacancies by the appointment of some other suitable person or persons.

Duty of the secretary of the territory.

Sec. 5. It shall be the duty of the secretary of the territory, immediately after the passage of this act, to notify the first named commissioner of the appointment of said commissioners, and said commissioner shall notify the other two.

This act to take effect and be in force from and after its passage.

CHAPTER 118.

An act to declare the Santa Fe road a territorial road.

§ 1. What road declared a territorial road. | § 2. Court to keep road in good repair.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Directions of said road.

Section 1. That the Santa Fe road, commencing at the eastern territorial line of the territory of Kansas, near the house of Samuel McKinney, of Jackson county, Missouri; thence by the way of R. McCamish's, on Bull creek; thence by the way of the town of Salem, at Hickory Point; thence by the way of McGee's, on One Hundred and Ten creek; thence by the way of C. Withington's, on One Hundred and Forty-Two creek; thence by way of A. J. Baker's, at the crossing of Rock creek, to Council Grove, in the territory of Kansas, and the same is hereby declared to be a territorial road.

Court to keep road in repair.

Sec. 2. It shall be the duty of the county courts of the counties through which said road passes, to cause said road to be kept in repair by the hands subject to work on roads, not less than one hundred feet wide; said road shall be regulated and kept in good repair as other territorial roads are usually kept.

This act to take effect and be in force from and after its passage.

CHAPTER 119.

An act to establish a territorial road from a point opposite St. Joseph, Missouri, to Indianola, in the territory of Kansas.

§ 1. What road is established.
2. Road to run by Grasshopper Falls.
§ 3. Commissioners appointed, duty, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That a territorial road be and is hereby established from a point opposite St. Joseph, Missouri, to Indianola, in the territory of Kansas. Road.

SEC. 2. That said territorial road shall run by the way of Grasshopper Falls to Indianola. Direction of.

SEC. 3. That George H. Perrin, A. J. Whitney and Carey B. Whitehead be and are hereby appointed commissioners to survey, mark out and establish the same. Commissioners.

This act to take effect and be in force from and after its passage.

CHAPTER 120.

An act to lay off and establish a territorial road from the California road, near Ferrill's, to Baptiste Peoria's.

§ 1. Commissioners appointed.
§ 2. Time and place of meeting.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Samuel C. Wear, S. M. Salters and J. Davison be appointed commissioners to mark and lay off a territorial road from the California road, near Ferrill's, along the Fremont trail, to Blanton's bridge; thence to the Santa Fe road, near the head of Bull creek; thence by the nearest and best route to Baptiste Peoria's, on Bull creek. Commissioners. Direction of road.

SEC. 2. Said commissioners shall meet at such time and place as is most convenient, and proceed to lay off and mark said road. Time and place of meeting.

This act to take effect and be in force from and after its passage.

CHAPTER 121.

An act entitled "an act to establish a territorial road from Atchison, via Mount Pleasant and Hickory Point, to a point on the Kansas river opposite the town of Lecompton.

§ 1. Commissioners appointed.	§ 2. Place and time of meeting.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

Direction of road.

SECTION 1. That Ira Norris, of Atchison, William Young, of Mount Pleasant, and Aristides Rodrigue, of Lecompton, be and are hereby appointed commissioners to locate and establish a territorial road from the town of Atchison, Kansas territory, *via* Mount Pleasant and Hickory Point, to a point opposite Lecompton, on the Kansas river.

Place and time of meeting.

SEC. 2. That the said commissioners shall meet at the town of Atchison, on the twentieth of October, eighteen hundred and fifty-five, or as soon thereafter as practicable, and proceed to locate and establish said road agreeably to the provisions of an act entitled "an act to provide for locating territorial roads in and for the territory of Kansas."

This act to take effect and be in force from and after its passage.

CHAPTER 122.

An act to establish a territorial road from Delaware, on the Missouri river, to Calhoun and other points.

§ 1. Commissioners appointed, &c.	§ 4. Vacancies, how filled.
2. Oath of.	5. Shall appoint surveyor; duties of, &c.
3. Commissioners can meet on a subsequent day in case of a failure to meet on the day specified.	6. Duties of the county tribunal in keeping the road open.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

Time and place of meeting.

SECTION 1. *First*, that Perry Flughman, William Bonnell and James Kuykendall, of the territory of Kansas, be and they are hereby appointed road commissioners, whose duty it shall be to meet at the town of Delaware, on the Missouri river, on the fifteenth day of September, eighteen hundred and fifty-five, and from thence proceed to view and mark out a territorial road running the nearest and most practicable route in the direction of Calhoun, on the Kansas river; and thence, at said Calhoun forking, the left hand fork crossing the river at said place and terminating at Topeka, on the south bank of said river, and the right hand fork running the nearest and best route, intersecting the Military road from Leavenworth to Fort Riley, near the crossing of Soldier creek.

SEC. 2. The above named commissioners, before entering upon the duties assigned them by this act, shall severally take an oath, before some officer authorized to administer the same, faithfully to perform the duties assigned them by this act.

Commissioners to take an oath.

SEC. 3. Should said commissioners fail to meet on the day herein designated, they shall meet on some subsequent day prior to the first day of November, one thousand eight hundred and fifty-five.

Can meet on a subsequent day.

SEC. 4. Should a vacancy or vacancies occur in said board of commissioners by any cause whatsoever, the remaining commissioners or commissioner shall appoint some other suitable person or persons to act as such.

Vacancy, how filled.

SEC. 5. Said commissioners shall appoint a surveyor and two chain carriers to accompany them, and shall cause their surveyor to make as many complete plats of the said road as there may be counties organized through which said road may pass, for the use of the courts of said counties; with an additional plat, to be forwarded by the said commissioners to the secretary of the territory, and to the clerks of said county courts, whenever said courts are organized, noting particularly the courses and distances of the same.

Shall appoint a surveyor.

SEC. 6. It shall be the duty of said courts, when organized and said plats filed, to see that said road is opened and kept in good repair (at least forty feet wide) by the hands subject to work on roads and highways in their respective counties.

Duty of court.

This act to take effect and be in force from and after its passage.

CHAPTER 123.

An act entitled "an act to locate a territorial road."

§ 1. Commissioners appointed.
2. When commissioners shall meet.
§ 3. Power to fill vacancies.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That S. D. Pitcher, Henry Adams, William Sublette and A. Q. Rice be and are hereby appointed commissioncommissioners to locate and establish a territorial road from Wyandotte ferry, on Kansas river, by the town of Delaware; thence by the city of Leavenworth, thence by the town of Kickapoo, thence by the town of Port William, thence by the town of Atchison, thence by the town of Doniphan, thence by the town of Iola, thence by the town of Iowa Point, to a point on the territorial line between the territories of Kansas and Nebraska, opposite Roy's ferry, over the Great Nemaha river, to be established on the nearest and best route.

Place of meeting.

SEC. 2. Said commissioners shall meet in the city of Leavenworth, on the tenth of September, eighteen hundred and fifty-five, or as soon thereafter as may be practicable, and proceed to locate and establish said road according to law.

Power to fill vacancies.

SEC. 3. Any two of said commissioners shall have power to fill vacancies in their own body which shall in anywise occur, and any three of said commissioners shall be authorized to carry out the provisions of this act.

This act to take effect and be in force from and after its passage.

CHAPTER 124.

An act to establish a territorial road from Whitehead to intersect the St. Joseph and Fort Riley road.

§ 1. Commissioners appointed to lay out road.
2. Commissioners shall take an oath.
§ 3. Vacancy in board, how filled.
4. Duties of; shall employ a surveyor, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

SECTION 1. That Uriah Griffith, Isaac G. Weld and James R. Whitehead be and they are hereby appointed road commissioners, whose duty it shall be to meet at the house of James R. Whitehead, on the first Monday in November next, and from thence proceed to view and mark out a territorial road, commencing at the town of Whitehead and running in a western direction by the farm of Joel P. Blair, or upon the best and most practicable route, until it intersects a territorial road to be marked out from St. Joseph, Missouri, to Fort Riley; thence to Lecompton.

Direction of road.

SEC. 2. The above named commissioners, before entering upon the discharge of the duties assigned them by this act, shall severally take an oath, before some officer authorized by law to administer the same, faithfully to perform the duties assigned them by this act; and should they fail to meet on the day herein designated, they shall meet on some subsequent day to be agreed on by said commissioners.

Commissioners shall take an oath.

SEC. 3. Should a vacancy occur in said board of commissioners, the remaining commissioner or commissioners shall appoint some suitable person or persons to act as such.

Vacancy, how filled.

SEC. 4. Said commissioners shall employ a surveyor and two chain carriers to accompany them, and shall cause their surveyor to make out a complete plat of said road, which shall be filed in the office of the clerk of the county courts of the respective counties through which said road may pass.

Duty of.

This act to take effect and be in force from and after its passage.

CHAPTER 125.

An act to establish a territorial road from Leavenworth to Bernard's store, in the territory of Kansas.

§ 1. What road is declared a territorial road. | § 2. Commissioners appointed, their duties, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That a territorial road be and the same is hereby established from the town of Leavenworth, by way of the town of Franklin, to Bernard's store, in the territory of Kansas.

What road is declared.

SEC. 2. That John M. Wallace, T. T. Slocum and Joseph Bernard be and the same are hereby appointed commissioners to view out, locate and establish said road in accordance with the provisions of the general law heretofore passed upon the subject of roads.

Commissioners; duties, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 126.

An act to establish a road from Iowa Point to the California road.

§ 1. Commissioners appointed to locate road. | § 2. Commissioners to meet at Iowa Point, and proceed to lay out said road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners appointed to locate road.

SECTION 1. John S. Pemberton, William D. Beeler and A. Q. Rice, of the county of Doniphan, are hereby appointed commissioners to locate a territorial road from Iowa Point, in said county, to run as nearly westward as practicable until it intersects the road known as the California road.

Commissioners shall meet at Iowa Point.

Shall proceed to lay out said road.

SEC. 2. Said commissioners, or a majority of them, shall meet at said town of Iowa Point at such time as they may agree upon, not to exceed three months from the passage of this act, and proceed to lay out said road in accordance with the laws of this territory regulating roads and highways, and they shall receive such compensation as is by law allowed for such services.

This act to take effect and be in force from and after its passage.

CHAPTER 127.

An act to establish a territorial road from the town of Neosho Mission to Council Grove.

§ 1. Commissioners, &c.
2. Commissioners shall appoint surveyor, &c.
§ 3. Compensation of commissioners.
4. The clerk shall spread the plat on the records of the county.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas as follows:

Commissioners, who appointed; duties, &c.

SECTION 1. That John B. Smith, Christopher Columbia and William Godfroy are hereby appointed road commissioners, whose duty it shall be to meet at the Catholic Osage Mission, in said territory, on the second Monday in the month of September next, or as soon thereafter as a majority of them may determine, and from thence to proceed to survey, mark out and locate said road, commencing on the Missouri state line at or near the town of Neosho, and to run from thence the most eligible route by way of said Catholic Osage Mission, Cofachiqui, and Columbia city, to Council Grove and Pawnee.

Sec. 2. Said commissioners shall have full power to appoint the necessary surveyors, chain carriers, stake drivers, and provide the necessary teams, provisions and provender.

Power to appoint surveyor, &c.

Sec. 3. Said commissioners shall receive the sum of three dollars per day; the surveyor shall receive the like sum of three dollars; the teamster shall receive a suitable compensation, to be certified and allowed by said commissioners, and paid in like manner as others employed in locating said road; all others employed shall receive the sum of two dollars each, to be paid out of the county treasury of the counties through which it may pass, in proportion to the number of miles that may lay in each county, upon application made to the tribunal transacting county business, certified by the affidavit of at least two of said commissioners, setting forth the number of persons employed and the number of days engaged, accompanied by a report and plat of the road.

Compensation of commissioners.

Sec. 4. It shall be the duty of the clerk of the tribunal transacting county business, in each county, to spread the report and plat on the records of such county.

Clerk to spread the plat on the records of the county.

This act to take effect and be in force from and after its passage.

CHAPTER 128.

An act to declare the road leading from Fort Atkinson to Bent's Old Fort a territorial road.

§ 1. What road declared a territorial road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Section 1. That the road leading from Fort Atkinson to Bent's Old Fort is hereby declared a territorial road; said road shall be kept in good repair as is provided for by law.

What road declared a territorial road.

This act to take effect and be in force from and after its passage.

CHAPTER 129.

An act to declare certain roads public highways.

§ 1. Certain road declared a public highway.
2. Declaring a certain road a public highway.
§ 3. Declaring another certain road a public highway.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, that the following roads be and they are hereby declared public highways:

What road declared.

Boundaries and direction of road.

SECTION 1. The road commencing at James W. Maunior's, on the line between Kansas territory and the state of Missouri, about two miles from Westport, running thence by M. Cleave's, Coffey's on Camp creek, the farm of James Bent, Ferguson's on the Marais des Cygnes, Henry Sherman's, the Old Catholic Mission on Big Sugar creek, and Stockton's on Little Sugar creek, to Fort Scott.

Bounds and direction of road.

SEC. 2. The road commencing at Coffey's on Camp creek, running thence to Baptiste Peoria's, thence to Miami village, and thence to Westpoint, on the line between Kansas territory and the state of Missouri.

Bounds and direc- of road.

SEC. 3. The road commencing at Cold Water Grove, running thence by way of Wea Mission, Baptiste Peoria's and Ottawa Mission to St. Bernard.

This act to take effect and be in force from and after its passage.

CHAPTER 130.

An act to declare the road now leading from the California road, near Wakefield, to Lecompton, along the ridge between Snyder's and Wm. Todhunter's, and marked out by a double furrow, a public highway.

§ 1. Title of road.
§ 2. Road shall be one hundred feet wide.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Title of road.

SECTION 1. That the road now leading from the California road, near Wakefield, along the ridge between Snyder's and Wm. Todhunter's, and marked out by a double furrow, be and is hereby declared a public highway.

SEC. 2. That said road shall be one hundred feet wide, and kept in good repair as all other public highways belonging to the territory.

Shall be 100 feet wide.

This act to take effect and be in force from and after its passage.

CHAPTER 131.

An act declaring certain roads public highways.

§ 1. What road; boundaries of, &c.
2. Commissioners appointed.
3. Power and duty of commissioners.
§ 4. Any one commissioner may act as surveyor.
5. Direction of road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That the road, known as the California road, commencing at a point on the line between the state of Missouri and the territory of Kansas, about twenty miles north of Fort Scott; thence west across Litle Sugar creek at Sugar Mound, across Big Sugar creek at Young's, across Pottawatamie at Henry Sherman's, the Marais des Cygnes, or Osage, near the Ottowa Mission; thence to Bernard's store; thence to the Willow Springs post office, be and is hereby declared a public highway.

Boundaries of road, &c.

SEC. 2. That Thomas Markbee, Enoch Reed, Charles Stewart, Aaron Kinney and Samuel Sproul be and are hereby appointed commissioners to view and mark out a road from Willow Springs, *via* Glendale, crossing Elk Fork of Wakarusa, between the claims of Henry W. Frick and Allen Pearson, to the Kansas river, at the most desirable point above or at the town of Tecumseh.

Commissioners.

SEC. 3. Said commissioners shall have power to appoint one surveyor and two chain carriers, whose duty it shall be to survey and measure said road, under the direction of the said commissioners; and said surveyor shall make out a plat thereof, and file the same in the office of the tribunal transacting county business.

Power and duty of commissioners.

SEC. 4. Any one of the said commissioners may act as surveyor, and, in the absence or non-attendance of any one or more of the commissioners, a majority of the number appointed shall have power to appoint others, and fix the day on which they will meet; and any one of said commissioners, in the absence of others, shall have power to adjourn from time to time until a quorum shall meet.

Any one commissioner may act as surveyor.

Direction of road.

SEC. 5. That the road, commencing at a point on the road described in the first section of this act, near Henry Sherman's; thence north across the Marais des Cygnes, or Osage, at or near Ferguson's; thence across Bull creek, about seven miles above Baptiste Peoria's; thence north toward Westport, in Missouri, till it intersects the line between Missouri and the territory of Kansas, at a point near Thomas's *wind-mills*, be and the same is hereby declared a public road or highway.

This act to take effect and be in force from and after its passage.

CHAPTER 132.

An act to locate and establish a territorial road from the town of Atchison to the town of Iola, in the territory of Kansas.

§ 1. Commissioners appointed, &c. | § 2. Time and place of meeting, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That Samuel Dixon, Wm. C. McVay and A. Q. Rice be and are hereby appointed to locate and establish a territorial road from the town of Atchison, Kansas territory, to the town of Iola, in the county of Doniphan, Kansas territory.

Time and place of meeting, &c.

SEC. 2. Said commissioners shall meet at the town of Atchison, on or before the first Monday of November next, and proceed to locate and establish said road on the nearest and best route between the points aforesaid.

This act to take effect and be in force from and after its passage.

CHAPTER 133.

An act entitled "an act to locate and establish a territorial road from the town of Mt. Vernon, on the Missouri river, to the town of Calhoun, on the Kansas river."

§ 1. Commissioners appointed, &c.
2. Time and place of meeting.
§ 3. Power to fill vacancies.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

SECTION 1. That James Kuykendall, Patrick Cooper and Carey B. Whitehead be and are hereby appointed commissioners to locate and establish a territorial road from the town of Mount Vernon, on the Missouri river, to the town of Calhoun, on the Kansas river, by the nearest and best route.

Direction of road, &c.

SEC. 2. The said commissioners shall meet at the town of Mount Vernon, on the Missouri river, on the first of November next, or as soon thereafter as may be practicable, and proceed to locate said road according to law.

Time and place of meeting.

SEC. 3. Any one or two of said commissioners shall have power to appoint person or persons to fill vacancy or vacancies in their own body, and shall be paid according to law.

Power to fill vacancies.

This act to take effect and be in force from and after its passage.

CHAPTER 134.

An act to establish a territorial road from a point opposite St. Joseph, Missouri, to the Great Nemaha river.

§ 1. What is established; direction, &c. | § 2. Commissioners appointed, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That a territorial road be and is hereby established in the territory of Kansas, from a point opposite St. Joseph, in Missouri, to Cramer's crossing of the Great Nemaha river; thence to the junction of the California road with the Military road leading from Fort Leavenworth to Fort Kearney, in said territory; said road to go by the way of Whitehead and the Great Nemaha Agency to said point as designated.

Direction of road.

SEC. 2. That Laban Pritchard, James R. Whitehead and Thomas J. B. Cramer be and are hereby appointed commissioners to locate and establish said road, according to the provisions of an act entitled "an act to locate and establish territorial roads in the territory of Kansas."

Commissioners appointed, &c.

This act to take effect and be in force from and after its passage.

CHAPTER 135.

An act to declare a certain road a territorial road.

§ 1. What road is declared a territorial road; direction, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That the present road, leading from the Wyandotte ferry across the Kansas river, and passing by Joel Walker's, Charles Garrett's and Noah Zaines' to the Parkville ferry, is hereby declared a territorial road.

This act to take effect and be in force from and after its passage.

CHAPTER 136.

An act to view and mark out a road from "One Hundred and Ten," via Glendale and the town of Douglas, to intersect the Military road from Fort Leavenworth to Fort Riley.

§ 1. Commissioners appointed, &c.
2. Commissioners to appoint a surveyor, &c.
§ 3. Any one of commissioners to act as surveyor.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

Direction of road, &c.

SECTION 1. That John M. Smith, Wm. Johnson, Charles Stewart, Paris Ellison and Ephraim Conner be and are hereby appointed commissioners to view and mark out a road from "One Hundred and Ten" to the town of Douglas, *via* Glendale, and from thence to the most desirable point on the road leading from Fort Leavenworth to Fort Riley, on the nearest and most desirable route.

Surveyor to be appointed.

To make out plat, &c.

SEC. 2. The commissioners shall have power to appoint one surveyor and two chain carriers, whose duty it shall be to survey and measure said road, under the direction of the said commissioners, and said surveyor shall make out a plat thereof, and file the same in the office of the tribunal transacting county business.

Any one of commissioners to act as surveyor.

SEC. 3. Any one of the commissioners may act as surveyor, and in the absence or non-attendence of any one or more of the commissioners, a majority of the number appointed shall have power to appoint others, and fix the day on which they will meet; and any one of said commissioners, in the absence of others, shall have power to adjourn, from time to time, until a quorum shall meet.

This act to take effect and be in force from and after its passage.

CHAPTER 137.

An act for a territorial road from the town of Atchison to the town of Marysville.

§ 1. Commissioners appointed, &c. | § 2. Duty of commissioners.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Thomas J. B. Cramer, Henry Adams and Jackson C. Thompson be and they are hereby appointed commissioners to locate and establish a territorial road to run by the towns of Richmond and Wadson. Direction of road.

SEC. 2. Said commissioners shall cause the said road to be located and established in strict conformity to the provisions of "an act to locate and establish territorial roads in the territory of Kansas." Duty of commissioners.

This act to take effect and be in force from and after its passage.

CHAPTER 138.

An act to view and mark out a road from the eastern boundary line of the territory of Kansas, near Westport, Jackson county, Missouri, a part of the way, and to declare a part of the road now running to Fort Leavenworth a territorial road.

§ 1. Commissioners appointed.
2. Compensation of commissioners.
§ 3. Duty of the secretary of the territory.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

SECTION 1. That Isaac Munday, Daniel Dofflemyer and Cyprian Chouteau be and are hereby appointed commissioners to view and mark out a road from a point at or near where the present road leading from Westport, Jackson county, Missouri, Commissioners.

Direction of road.

crosses the eastern boundary line of the territory of Kansas, by the way of Captain Joseph Parck's, thence by the Shawnee Manual Labor School, to intersect the present road now leading to Fort Leavenworth, north of and near the Quaker Mission Farm, and that the road leading from said Quaker Mission Farm by the way of James Findlay's, at the crossing of Kansas river, to Fort Leavenworth, be declared a territorial road.

Compensation of commissioners.

Sec. 2. Said commissioners shall receive such compensation as may hereafter be allowed by law.

Duty of the secretary, &c.

Sec. 3. It shall be the duty of the secretary of the territory, immediately after the passage of this act, to notify the above-named commissioners of their appointment and of the time and place of their meeting.

This act to take effect and be in force from and after its passage.

CHAPTER 139.

An act to view and mark out a road from Black Jack Point, on the Santa Fe road; thence, by the way of Joel M. Bernard's store, to a point on the Santa Fe road, at or near McGee's, on the One Hundred and Ten creek.

§ 1. Commissioners appointed, &c.
2. Commissioners to appoint surveyor, &c.
3. Vacancies in board how filled.
4. Copy of survey to be laid before county tribunal.

§ 5. County tribunal to keep road in repair.
6. Compensation of commissioners and others employed.
7. Duty of the secretary of the territory.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

Section 1. That G. T. Keezer, J. B. Davis, and J. M. Bernard, of the fourth district, be and they are hereby appointed commissioners, whose duty it shall be to survey and mark out a road from Black Jack Point, on the south side of Kansas river, on the Santa Fe road; thence, by the way of Joab M. Bernard's store, to the Santa Fe road, at or near McGee's, on One Hundred and Ten creek, due regard being had to the ground over which the said road shall run, with the least possible injury to individuals.

Direction of road.

Surveyor to be appointed.

Sec. 2. The commissioners shall appoint a competent surveyor and two chain carriers, who, together with the commissioners, shall take an oath before some officer competent to administer the same, to execute faithfully the requirements of this act.

Vacancy, how filled.

Sec. 3. Should a vacancy or vacancies occur in said board of commissioners, the remaining commissioner or commissioners shall fill such vacancy or vacancies by the appointment of some suitable person or persons.

Copy of survey to be laid before county tribunal.

SEC. 4. As soon as said survey is completed, the said commissioners and surveyor shall make out a full report of the same, copies of which shall be laid before the county courts of the respective counties through which said road shall pass, at their first session thereafter, and they also shall forward one copy of said report to the secretary of the territory.

County tribunal to keep road in repair.

SEC. 5. The county courts of the counties through which said road shall pass, as soon as practicable after the receipt of said plats, shall cause so much of said road as lies in their respective counties to be opened at least sixty feet wide, and to be kept in repair as other roads and highways are opened and repaired.

Compensation of officers and laborers.

SEC. 6. The commissioners, surveyors and chain carriers shall receive such compensation as may be allowed by law.

Duty of the secretary of the territory.

SEC. 7. It shall be the duty of the secretary of the territory, immediately after the passage of this act, to notify the above-named commissioners of their appointment and of the time and place of their meeting.

This act to take effect and be in force from and after its passage.

CHAPTER 140.

An act to establish a territorial road from Leavenworth city to the town of Salem, on the Santa Fe road, in Kansas territory.

§ 1. What road is established a territorial road.
§ 2. Commissioners appointed; duty of, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That there be and is hereby established a territorial road, commencing at Leavenworth city, thence to run by the way of Lawrence, in said territory, on the most practicable route to Salem, in said territory.

Commissioners.

Duty of, &c.

SEC. 2. That J. Davidson, William Oliver and F. M. Coleman be and are hereby appointed commissioners, whose duty it shall be to view, mark and locate said road, beginning, running and ending as described in the first section of this act.

This act to take effect and be in force from and after its passage.

CHAPTER 141.

An act to establish a territorial road from Atchison to Pawnee, by the way of Grasshopper Falls, in the territory of Kansas.

§ 1. What road is established a territorial road.
§ 2. Commissioners appointed; duties, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That a territorial road be and is hereby established from Atchison to Pawnee, by the way of Grasshopper Falls, in the territory of Kansas.

Commissioners appointed, &c.

SEC. 2. That Francis Burshong, Robert Riddle and J. R. Williams are hereby appointed commissioners to survey and establish said road.

This act to take effect and be in force from and after its passage.

CHAPTER 142.

An act to view and mark out a road from Doniphan city to Kelley's ferry, on the Missouri river.

§ 1. Commissioners appointed, &c.
§ 2. Commissioners shall take oath, &c.
§ 3. Vacancy in board, how filled.
§ 4. Surveyor, how employed, &c.
§ 5. Compensation of commissioners and employees.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners.

Time and place of meeting.

Direction of road.

SECTION 1. That James Foreman, Hampton Johnson and Richard Morris be and they are hereby appointed road commissioners, whose duty it shall be to meet at the house of Milton Bryan, on the first Monday of October next, and from thence proceed to view and mark out a territorial road, commencing at Doniphan city, thence to Palermo, thence to Wathena, thence to Whitehead, thence to Smithton, thence to Kelley's ferry, across the Missouri river at the upper end of Burr Oak bottom.

Commissioners shall take oath, &c.

SEC. 2. The above named commissioners, before entering on the duties assigned them by this act, shall severally take an oath, before some judge or justice of the peace, faithfully to perform the duties assigned them by this act; and should they fail on the day herein designated, they shall meet on some subsequent day agreed on by said commissioners.

Vacancy in board, how filled.

SEC. 3. Should a vacancy occur in said board of commissioners, the remaining commissioner or commissioners shall appoint some suitable person or persons to act as such.

Surveyor, how employed, &c.

Plat to be filed, &c.

SEC. 4. Said commissioners shall employ a surveyor (who may be one of themselves,) and two chain carriers to accompany them; and shall cause their surveyor to make out a plat of said road, which shall be filed in the office of the clerk of the court of the county.

Compensation of commissioners and employees.

SEC. 5. The commissioners, surveyor and chain carriers to receive such pay as may be prescribed by law.

This act to take effect and be in force from and after its passage.

CHAPTER 143.

An act to establish a territorial road from Leavenworth city, on the Missouri river, to Indianola; in the territory of Kansas, by the way of Money creek and Grasshopper Falls.

§ 1. What road is declared a territorial road. | § 2. Commissioners appointed, &c.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

SECTION 1. That a territorial road is hereby established from Leavenworth to Indianola, by the way of Money creek and Grasshopper Falls.

Commissioners appointed, &c.

SEC. 2. That James Frazer, J. B. Ross and George H. Perrin are hereby appointed commissioners to survey and establish said road.

This act to take effect and be in force from and after its passage.

CHAPTER 144.

An act to declare a certain road a territorial road.

§ 1. What road declared a territorial road.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road, &c.

Section 1. The road leading from Gerrard's or Polk's old crossing on the Big Osage river, running thence along the Military road leading from Fort Scott to Fort Leavenworth, about three miles to where the old road leading from said crossing to Kleitone, the Little Osage village, (Owl's band,) leaves said Military road; from thence by way of the old Indian crossing of said road on the Neosho river, about one mile above the mouth of Big creek; from thence to the crossing of the Verdigris river at or near William J. Godfroy's trading post; thence to strike th Arkansas river at or near the mouth of Salt Fork of said Arkansas river, is hereby declared a territorial road, and shall be kept in repair as provided for by law for territorial roads.

This act to take effect and be in force from and after its passage.

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CHAPTER 145.

An act to establish a territorial road from Wyandotte, via Jacksonville, to Osawkee.

§ 1. Commissioners appointed, &c.
2. Duty of commissioners, &c.
3. Surveyor to be appointed, &c.
§ 4. Majority may act.
5. Compensation of commissioners and others employed.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Commissioners, &c.

Section 1. That Dr. James Noble, William Walker and Thomas Noble be and are hereby appointed commissioners to lay out and establish a territorial road from Wyandotte to Osawkee, *via* Jacksonville.

Duties of commissioners, &c.

Sec. 2. Said commissioners shall erect finger-boards along said road wherever it may be deemed necessary.

Surveyor to be appointed.

Sec. 3. The commissioners shall have power to appoint on surveyor and two chain carriers, whose duty it shall be to sur vey and mark out said road, under the directions of said commissioners; and said surveyor shall make out a plat thereof and file the same in the office of the clerk of the tribunal transacting county business, in the several counties through which said road may pass.

Plat to be filed, &c.

Majority may act.

Sec. 4. In the absence of any one or more of the commissioners, a majority of the members appointed shall have power to appoint others, and also the day and place where they will meet.

Compensation of commissioners and other employees.

Sec. 5. Said commissioners, surveyors and chain carriers shall receive a reasonable compensation for their services in establishing said road, to be paid out of any money in the treasury, not otherwise appropriated, of the county or counties through which said road may be located.

This act to take effect and be in force from and after its passage.

CHAPTER 146.

An act to establish a territorial road from the city of Kickapoo, through the valley of Salt creek, to the city of Leavenworth.

1. Commissioners appointed, &c.
Time and place of meeting of commissioners.
3. Vacancies in board, how filled.
4. Compensation of commissioners.
5. Commissioners to be governed by the general law appertaining to roads.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Direction of road.

Section 1. S. M. Tunnel, C. Marion Brown and John W. Martin are hereby appointed commissioners for the purpose of viewing and marking out a territorial road from the city of Kickapoo, through the valley of Salt creek, to the city of Leavenworth, on the best and most practicable route.

Time and place of meeting.

Sec. 2. The commissioners shall meet for the purpose, on the first Monday of October, *anno Domini* eighteen hundred and fifty-five, or on some subsequent day to be agreed on by a majority of their number.

Vacancy in board, how filled.

Sec. 3. If any vacancy occur in the board of commissioners, the remaining commissioners or commissioner shall fill the same by the appointment of some suitable person or persons.

Compensation of commissioners.

Sec. 4. The commissioners shall receive, each, for his compensation, under this act, three dollars per day, for each day he may be necessarily employed in the services herein designated, to be paid out of the county treasury through which said road may pass.

Commissioners to be governed by the general law appertaining to roads.

Sec. 5. The commissioners, tribunal transacting county business, and those who may be liable to work on said road, shall, in all respects, be governed by the general law now in existence, or which may be passed by the legislature now in session, for opening and repairing public highways.

This act to take effect and be in force from and after its passage.

CHAPTER 147.

An act to establish a road from Kickapoo to Money Creek, in the territory of Kansas.

§ 1. Road from Kickapoo to Money creek. | § 2. Commissioners appointed.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:

Road from Kickapoo to Money creek.

Section 1. That a road be and is hereby established from Kickapoo to Money creek, in the territory of Kansas.

Commissioners appointed.

Sec. 2. That James C. Thompson, Henry Morris and Jesse Salisbury are hereby appointed commissioners to survey and establish said road.

This act to take effect and be in force from and after its passage.

APPENDIX.

NATURALIZATION OF ALIENS.

Abstract of the laws of the United States in relation to the naturalization of aliens.

SECTION 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

SEC. 2. *First*, That he shall have declared on oath, or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit, or district court of the United States, or before the clerk of either of such courts, (*b*) two (*c*) years at least before his admission, that it was bona fide his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity, to any foreign prince, potentate, state, or sovereignty, whereof such alien may, at the time, be a citizen or subject. (*d*)

SEC. 3. From this condition is exempted any alien, being a free white person, who was residing within the limits, and under the jurisdiction, of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same. (*e*)

SEC. 4. Any alien, being a free white person and a minor under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to be a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the second section, two years previous to his admission; but such alien shall make the declaration required therein at the time of his or her admission, and shall further declare on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States, and shall in all other respects comply with the laws in regard to naturalization. (*f*)

SEC. 5. When any alien, who shall have complied with the condition in section second, and who shall have pursued the directions prescribed in the second section of the act of April fourteenth, one thousand eight hundred and two, (*g*)

(*b*) Act May 26. 1824, section 3; Story, 1793; Gordon's Digest, 312.

(*c*) Ibid, section 4.

(*d*) Act April 14, 1802; Story, 850; Gordon's Digest, 312, and *vide*, section 14 of this abstract.

(*e*) Act March 26, 1804, section 1; Story, 942; Gordon's Digest, 313.

(*f*) Act May 26, 1824, section 1; Story, 1973; Gordon's Digest, 314.

(*g*) The second section of the act of April 14, 1802, required the alien, when he arrived in the United States, to have his name registered, &c., with the clerk of the proper court, &c. This section was repealed by the act May 24, 1823; Story, 850, 2145, section 4; Peters's Rep, 393; Spratt vs. Spratt.

may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oath prescribed by law.(*h*)

SEC. 6. An alien shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth entirely and absolutely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly (by name,) the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. (*i*)

SEC. 7. The court, admitting such alien, shall be satisfied that he has resided within the United States five years at least, and within the state, or territory, where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; the oath of such applicant shall, in no case, be allowed to prove his residence. (*j*)

SEC. 8. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom, or state, from which he came, he shall, in addition to the above requisites, make an express renunciation of his title, or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien who shall be a native, citizen, denizen, or subject of any country, state or sovereignty, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States. (*k*)

SEC. 9. But persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year of our Lord one thousand eight hundred and twelve, who had, before that day, made a declaration, according to law, of their intention to become citizens of the United States, or who, by the existing laws of the United States, were, on that day, entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies at the time, and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, Nothing herein contained shall be taken or construed to interfere with, or prevent the apprehension, or removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien. (*l*)

SEC. 10. Any alien, being a free white person, who was a resident within the

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(*h*) Act March 26, 1804, section 2; Story, 942; Gordon's Digest, 313.

(*i*) Act April 14, 1802, section 1; Story, 850; Gordon's Digest, 314. The oath of naturalization, when taken, confers the rights of a citizen. It is not necessary that there should be an order of court admitting the alien to become a citizen; Campbell vs. Gordon, et. al.; 6 Cranch, 176; nor that it should appear by the record of naturalization that all the requisites presented by the law for the admission of aliens, shall have been complied with; Stark vs. Ches. Ins. Com.; 7 Cranch, 420, section 8; Cranch. 335; 2 Galli. Rep., 111; Peters' C. C. Rep., 457. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states; constitution of the United States, article 4, section 2. Citizens of the United States have a right to expatriate themselves in time of war, as well as of peace. until restrained by congress. Such right is subject to the control of the legislature, and to render the exercise of it valid, there must be an an entire departure from the United States, for a purpose which is not illegal, nor in fraud of the duties at home of the emigrant; Talbot vs. Jansen, 3 Dallas. 133; Santissima Trinidad, 7 Wheat., 283; *vide*, U. S. vs. Williams, Halls and Jour, 461; U. S. vs. Gillies, 1 Peters, 161. A citizen of the United States, by becoming a citizen of another country, does not thereby cease to be a citizen of the United States, nor is he absolved from his original allegiance; *Ibid. ibid.* He may acquire in a foreign country, the commercial privileges attached to his domicil, and be exempted from the operation of commercial acts, embracing only persons resident in the United States, or under its protection; Murray vs. The Charming Betsey, 2 Cranch, 139.

(*j*) Act April 14, 1802, section 1; Story, 850; Gordon's Digest, 314.

(*k*) Act April 14, 1802, section 1; Story, 850; Gordon's Digest, 314.

(*l*) Act July 30, 1813; Story, 1354.

limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*, That when any person without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction, of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted, and the residence of the applicant within the limits, and under the jurisdiction, of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses, and such continued residence within the limits, and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the court, admitting the applicant, otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (*m*)

Sec. 11. Nothing in the foregoing section ten, contained, shall be construed to exclude, from admission to citizenship, any free white person who was residing within the limits, and under the jurisdiction, of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record, as aforesaid, may be entitled to become a citizen of the United States, according to section three: whenever any person, without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted as a citizen of the United States, it shall be proved, to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction, of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted, and the residence of the applicant within the limits, and under the jurisdiction, of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses, and such continued residence within the limits, and under the jurisdiction, of the United States, when satisfactorily proved, and the place or places where the applicant has resided, for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, on the record of the court admitting the applicant, otherwise the same shall not entitle him to be considered a citizen of the United States. (*n*)

Sec. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized, or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been, citizens of the United States, shall, although born out of the limits and jurisdiction of the United

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(*m*) Act May 24, 1828; Story, 2145, and Gordon's Digest, 313; and see Story, 1354.

(*n*) Act March 22, 1816, section 2; Story, 1539; Gordon's Digest, 313.

States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States; and no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed. (*o*) Children of persons naturalized before the fourteenth day of April, one thousand eight hundred and two, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth day of April, one thousand eight hundred and two, to be considered as citizens of the United States. (*p*)

SEC. 13. Any alien who was residing within the limits and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof, made to some of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least immediately preceding his application, within the state, or territory, where such court is at the time held; and on his declaring, on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; and when the alien applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom, or state, from which he came, on his moreover making in court an express renunciation of his title, or order of nobility, before he shall be entitled to such admission, all of which proceedings, required by this proviso, to be performed in the court, shall be recorded by the clerk thereof. (*q*)

SEC. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal and clerk, or prothonotary, shall be considered as a district court within the meaning of the naturalization act, and every alien who may have been naturalized in any such court, shall enjoy the same rights and privileges as if he had been naturalized in a district or circuit court of the United States. (*r*)

SEC. 15. No person who shall arrive in the United States after February the seventeenth, one thousand eight hundred and fifteen, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States. (*s*)

(*o*) Act April 14, 1802, section 4; Story, 850; Gordon's Digest, 315; Campbell vs. Gordon, 6 Cranch, 176.

(*p*) *Ibid, ibid.*

(*q*) Act April 14, 1802, Story, 850; Gordon's Digest, 315; Campbell vs. Gordon, 6 Cranch, 176.

(*r*) Act April 14, 1802; Story, 850; Gordon's Digest, 315.

(*s*) Act March 3, 1813, section 12; Story, 1304; Gordon's Digest, 315.

AUTHENTICATION OF RECORDS.

Abstract of the laws of the United States, in relation to the authentication of public acts, records, and judicial proceedings. (*a*)

Section 1. The acts of the legislatures of the several states, shall be authenticated by having the seal of their respective states affixed thereto; the records and judicial proceedings of the courts of any state shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form; and the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have by law, or usage, in the courts of the state from whence the said records are, or shall be taken. (*b*)

Sec. 2. All records and exemplifications of office books, which are, or may be, kept in any public office of any state, not appertaining to a court, shall be proved, or admitted, in any other court, or office, in any other state, by the attestation of the keeper of the said records, or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, or district, as the case may be, in which such office is, or may be, kept, or of the governor, the secretary of state, the chancellor, or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify under his hand, and the seal of his office, that the said presiding justice is duly commissioned and qualified; (*c*) or, if the said certificate be given by the governor, the secretary of state, the chancellor, or the keeper of the great seal, it shall be under the great seal of the state, in which the said certificate is made; and the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have, by law, or usage, in the courts, or offices, of the state from whence the same are, or may be, taken. (*d*)

Sec. 3. All the provisions of the two preceding sections, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices, of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts, and officers, of the several states. (*e*)

(*a*) **Article 4, section 1,** constitution of the United States.

(*b*) **Act May 26, 1790**; Story, 93; Gordon's Digest, 172. In authenticating records, the certificate of a presiding judge of a court, that he himself is the presiding judge, is good evidence of the fact; Hutchison vs. Patrick, 3 Missouri Rep, 65. A certificate by a judge of another state in these words, "I certify that the certificate of the clerk is in due form of law," is sufficient; Blair vs. Caldwell, 3 Missouri Rep., 353; *vide*, Bright vs. Woods. 8 Missouri Rep., 428.

(*c*) *Vide*, Paca vs. Dutton, 4 Missouri Rep., 371.

(*d*) **Act March 27, 1804**; Story, 947; Gordon's Digest, 173.

(*e*) Act March 27, 1804; Story, 948; Gordon's Digest, 173.

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Wagoner, Jonah, corporator of Louisiana Town Company 809
Walker, Joseph, corporator of Delaware Town Company 802
  Wm., corporator of His. and Phil. Society 831
    corporator of Wyandotte Lyceum 861
    road commissioner 978
  M. R., corporator of Wyandotte Lyceum 861
  J. P., corporator of Wyandotte Lyceum ... 861
  Joel, corporator of Wyandotte Lyceum ... 861
Wallace, Clarkson M., authorized to build toll bridge across Wakarusa river 769
  H. B., corporator of Delaware Town Company 802
  John M., road commissioner 965
Warwell, John, corporator of Lecompton Bridge Company 879
Washington, town of, incorporated 807
Wathena Plank Road Company, incorporated 876
Waterson, Thos. W., corporator of Centreville Seminary and Town Association 808
  corporator of Kansas University 939
Watts, H. N., corporator of Kansas River Bridge Company 833
  road commissioner 947
Wear, Sam'l C., road commissioner 961
Weld, Isaac G., road commissioner .. 942, 964
Westcott, J., road commissioner 940
Western R. R. Company, incorporated .... 914 to 920
Whitehead, ferry to be kept at 773
  James R., authorized to keep ferry 773
    corporator of Whitehead Town Company .... [illegible]
    road commissioner 942, 964, 971
  Jno. H., corporator of Whitehead Town Company .... [illegible]
Whitehead, Carey B., corporator of Wathena Plank and Macadamized Road Company 876
  road commissioner .... [illegible]
Whitehead Town Company, incorporated .... [illegible]
White, Albert L., corporator of Central R. R. Company .... [illegible]
[illegible], Thos. J., trustee of Fort Scott University .... [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Wilson, John, corporator of Delaware Town Company 802
  Grandison, corporator of Iola Town Company 804
  H. S., corporator of town of Fort Scott ... 812
  Robert, corporator of Saline Gypsum Association 859
    corporator of Leavenworth, Pawnee and W. R. R. Company 914
  James, road commissioner 955
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Wilhoit, E. S., corporator of Leavenworth, Pawnee and Western R. R. Company 914
Williams, Sam'l. A., corporator of Fort Scott Town Company 819
  secretary of Kansas Agricultural Society 835
  corporator of Cofachiqui Association .. 847
  corporator of Kansas Mining Company ... 872
  corporator of So. Ks. R. R. Company .. 909
Winter, Matthias, corporator of the town of Benicia 805
Wilkerson, E. S., corporator of Ks. Mining Company 872
Withington, Charles H., corporator of the town of Columbia 806
Woodson, Daniel, corporator of Lecompton Town Company 815
  corporator of Cofachiqui Association .. 817
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  corporator of Leavenworth R. R. Company 921
  corporator of Medical College 93
  Sam. H., corporator of Ks., Na. and Utah Stage Company 830
  Silas, corporator of Wathena Plank and Macadamized Road Company 876
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  corporator of Richmond Town Company 817
  corporator of Kansas Mining Company . 872
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Wood, John P., corporator of city of Lawrence .... [illegible]
  corporator of Kansas Valley R. R. Company .... [illegible]
Wolf, H. J., corporator of Kansas Mining Company 872
Wyandotte Lyceum, incorporated 861

Y.

Yager, Wm. O., corporator of Neosho Town Association .... [illegible]
  corporator of [illegible] Town Company ... [illegible]
  corporator of Tecumseh Lyceum, &c. ... [illegible]
  road commissioner .... [illegible]
Young, [illegible], corporator of Louisiana Town Company .... [illegible]
  Wm., road commissioner .... [illegible]
[illegible], corporator of Louisiana Town Company .... [illegible]

ERRATA.

Chapter 41, Insert "Douglas County, on the first Monday in April and September," after the word "August" in the sixth line of Section first, Chap. 41.

Insert the words "Madison County, on the fourth Monday in July and December," after the word "August" in the seventh line, Section first, Chapter 41.

Chapter 48: *An Act concerning crimes and the punishment of offences against the persons of individuals.* By reference to the original bill, passed by both houses, it appears that the enrolling clerk of the council has omitted a most important clause in the first section—which I have inserted: the clause begins at the word "or," after "poison," in second line, to the conclusion of the section.

Chapter 128, Art. 3, Sec. 13. *An Act regulating the practice in Courts of Chancery,* was omitted by enrolling clerk in enrolled bill; but as it was in the original bill, as passed by both houses, I have felt authorized to insert it here.

Chap. 129, Art. 2, Sec. 11. *An Act to regulate proceedings in criminal cases.* Enrolling clerk omitted the words, "or be of the grade of felony," which is in the original bill, as passed by both houses.

Art. 3, Sec. 7, same Act, the words "and may be permitted to interrogate witnesses before them," were in enrolled bill left out, but are in the original bill as passed by the two houses.

Art. 5, Sec. 4, same Act, last clause, beginning at "and any such buyer" was left out, but inserted here.

Art. 9, Sec. 19 and 20, same Act, are enrolled by clerk, but are stricken out of the bill which passed the two houses, and therefore ought not to be considered as part of this Act.

Art. 5, Sec. 21, of an act, entitled "*An Act to provide for the collection of Revenue,*" is not applicable so far as the dates are concerned.